

**SUPREME COURT OF ARKANSAS**

No. CR12-583

VINCENT M. COOPER

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** April 25, 2013PRO SE MOTION TO FILE A  
BELATED BRIEF [APPEAL FROM  
THE MILLER COUNTY CIRCUIT  
COURT, CR 2002-119, HON. KIRK  
JOHNSON, JUDGE]APPEAL DISMISSED; MOTION  
MOOT.**PER CURIAM**

In 2012, appellant Vincent M. Cooper filed in the trial court two motions in which he sought DNA and forensics testing under Act 1780 of 2001 Acts of Arkansas, as amended by Act 2250 of 2005 and codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). The trial court denied the motions, finding that the motions were a request for Act 1780 relief that constituted a successive petition for relief under the Act and that the court could summarily deny the motions on that basis.

Appellant lodged this appeal of the order denying his motions for scientific testing. Appellant tendered his brief-in-chief, but the tender did not comply with our rules of procedure, in that appellant tendered too few copies of the brief within the time required. Appellant later tendered additional copies, and he has now filed the pending motion to file a belated brief. Because it is clear that the appellant could not prevail on appeal, we dismiss the appeal, and the motion is therefore moot.

An appeal of the denial of postconviction relief, including an appeal from an order

denying a petition for writ of habeas corpus under Act 1780, will not be permitted to go forward where it is clear that the appellant could not prevail. *King v. State*, 2013 Ark. 133 (per curiam); *Strong v. State*, 2010 Ark. 181, 372 S.W.3d 758 (per curiam). The trial court based its decision to deny relief on Arkansas Code Annotated section 16-112-205, which provides in part as follows:

The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition if the issues raised in it have previously been decided by the Arkansas Court of Appeals or the Arkansas Supreme Court in the same case.

Ark. Code Ann. § 16-112-205(d). The trial court found that the motions that appellant had filed seeking relief under Act 1780 amounted to a successive petition under this provision and that the issues raised had been previously decided. We agree with that determination, and it is therefore clear that appellant cannot demonstrate error in the trial court's order summarily denying the motions requesting relief on that basis.

The generally applicable standard for review of an order denying postconviction relief dictates that this court does not reverse unless the circuit court's findings are clearly erroneous, although issues concerning statutory interpretation are reviewed de novo. *Echols v. State*, 2010 Ark. 417, 373 S.W.3d 892. An abuse of discretion standard applies when the statute allows the trial court to exercise discretion. See *Isom v. State*, 2010 Ark. 496, 372 S.W.3d 809. A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Pitts v. State*, 2011 Ark. 322 (per curiam). An abuse of discretion occurs when the circuit court acts arbitrarily or groundlessly. *Guy v. State*, 2011 Ark. 305 (per

curiam).

In 2010, appellant filed in the trial court motions similar to the ones at issue here, which were denied, and he appealed the denial to this court. *Cooper v. State*, 2012 Ark. 123 (per curiam). In that previous case, appellant had failed to rebut the presumption against timeliness that arises under section 16-112-202 of the Act. *Id.* In addition, this court noted that the evidence that appellant would have tested had already been held to have extremely low probative value by the court of appeals on direct appeal. *Id.* (citing *Cooper v. State*, CACR 05-818 (Ark. App. Mar. 1, 2006) (unpublished)). Appellant's identification of a specific alternative suspect in his previous petition was not sufficient to make the requested testing any more probative. *Id.*

In his 2012 motions, appellant asserted that there were new, more probative testing procedures available to refute the presumption of untimeliness. Appellant, however, did not provide any new facts that could potentially alter the previous holding that, even if the testing showed some connection between the suspect that he had identified and the items to be tested, the evidence had little probative value and would not substantially advance his claim of actual innocence. Instead, appellant alleged that the previous holding on that issue by the court of appeals was erroneous, arguing that certain evidence from the trial should not have been considered by the court of appeals as persuasive or compelling.

Act 1780 provides that a writ of habeas corpus can issue based on new scientific evidence proving a person actually innocent of the offense for which he was convicted. *Mitchael v. State*, 2012 Ark. 256 (per curiam). DNA testing of evidence is authorized under

this statute if testing or retesting can provide materially relevant evidence that will significantly advance the defendant's claim of innocence in light of all the evidence presented to the jury.

*Id.* Evidence does not have to completely exonerate the defendant in order to be materially relevant, but it must tend to significantly advance his claim of innocence. *Id.*

This court has already considered the determinative issue in appellant's 2012 motions that requested testing under Act 1780 and held that the testing appellant sought could not be granted in compliance with the Act. On appeal of the denial of appellant's 2010 Act 1780 motions, this court held that the evidence that appellant now asserts may result from the testing would have low probative value.<sup>1</sup> *Cooper*, 2012 Ark. 123, at 3–4. Because the evidence has low probative value, any evidence that might be produced through testing the items would not significantly advance appellant's claim of innocence, and the court was not required to authorize testing under the Act. The trial court was clearly correct in finding that

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<sup>1</sup>A brief summary of the evidence presented to the jury was detailed in the opinion of the court of appeals on direct appeal of appellant's conviction. The items to be tested were found in or near a dumpster near the convenience store that was robbed, and those items were linked to appellant and to the crimes by testimony of the store clerk and a police officer who observed appellant near the store two days later. The items included a jacket matching the description of clothing that had been worn by the person who robbed the store. Appellant was wearing the jacket when the officer first saw him, but, after appellant spotted the patrol car, he disappeared from sight near the dumpster and reappeared without it. The officer also noticed that appellant was carrying, before going out of sight, something white. The robber had on a white mask and carried a white cloth over what appeared to be a gun barrel. The items in the dumpster included a white mask and nearby there was a broken ornamental candy cane with a white rag wrapped around it that resembled a gun barrel. The other portion of the candy-cane ornament was discovered in an apartment that appellant had visited shortly before both crimes. *See Cooper*, 2012 Ark. 123, at 4. There was strong evidence that connected appellant to the items that he requested be tested, regardless of a possible connection with another individual.

appellant's 2012 motions under Act 1780 presented the same issue that had been considered by this court in appellant's appeal of the denial of his 2010 motions under Act 1780. The items to be tested were the same, and the court's findings to that effect were not clearly erroneous.

Having correctly determined that the issues were the same, the trial court did not abuse its discretion in summarily dismissing the motions as successive petitions under Act 1780. Our holding on the probative value of the evidence controls, in that Act 1780 relief cannot be granted to require testing of items that would not significantly advance appellant's claim of innocence. It follows that appellant cannot prevail on appeal of the denial of the 2012 motions, and we accordingly dismiss the appeal.

Appeal dismissed; motion moot.

*Appellant*, pro se.

No response.