

SUPREME COURT OF ARKANSAS

No. CR 10-558

LEWIS J. WHITE
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 4, 2010

PRO SE MOTION TO DUPLICATE
AT STATE EXPENSE [CIRCUIT
COURT OF PULASKI COUNTY, CR
2003-359, HON. HERBERT T.
WRIGHT, JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In a trial to the court, appellant Lewis J. White was found guilty of rape and sentenced to 240 months' imprisonment. The Arkansas Court of Appeals affirmed. *White v. State*, CACR 03-1294 (Ark. App. Sept. 22, 2004) (unpublished). In 2009, appellant filed in the trial court a motion to vacate and set aside the judgment 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 motion, and appellant lodged an appeal of the order in this court. Prior to the date his brief was due, appellant tendered three copies of a brief, and he has filed a pro se motion requesting duplication of the brief to provide the requisite number for filing. The motion is moot, however, because we dismiss the appeal.

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. *Strong v. State*, 2010 Ark. 181

372 S.W.3d 758 (per curiam). Here, appellant filed his motion seeking relief under Act 1780 alleging that new evidence would establish his innocence. Appellant instead contended that there is now documentary evidence that would impeach one of the witnesses and show that the victim had recanted her testimony. The grounds appellant advanced are not a basis for relief under the act.

Act 1780 of 2001 provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense for which he was convicted. Ark. Code Ann. 16-112-201(a); *Strong*, 2010 Ark. 181, 372 S.W.3d 758. Appellant admitted in his motion that the evidence on which he would have the court grant relief was not “scientific evidence.” On that basis, the trial court correctly determined that the relief sought fell outside of the statute’s scope. By appellant’s admission, his claim was not within the purview of the act. Because it is therefore clear that appellant cannot prevail on appeal, we dismiss the appeal, and the motion is moot.

Appeal dismissed; motion moot.