

Cite as 2019 Ark. 191  
**SUPREME COURT OF ARKANSAS**  
No. CV-19-109

ANARIAN CHAD JACKSON  
APPELLANT

V.

WENDY KELLEY, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
APPELLEE

Opinion Delivered: June 6, 2019

PRO SE MOTIONS FOR EXTENSION  
OF TIME TO FILE BRIEF AND TO  
DISMISS APPEAL WITHOUT  
PREJUDICE  
[JEFFERSON COUNTY CIRCUIT  
COURT, NO. 35CV-18-956]

APPEAL DISMISSED; MOTIONS  
MOOT.

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COURTNEY HUDSON GOODSON, Associate Justice

Appellant Anarian Chad Jackson filed a petition for writ of habeas corpus in the circuit court of the county where he was incarcerated that the circuit court denied. In the habeas petition, Jackson challenged a judgment and commitment order reflecting his 2002 conviction for first-degree murder and life sentence that this court affirmed on appeal. *Jackson v. State*, 359 Ark. 297, 197 S.W.3d 468 (2004). After lodging an appeal of the order denying his habeas petition in this court, Jackson filed a motion for extension of time to file his brief. He later filed a motion in which he asked that this court dismiss the appeal without prejudice so that he might bring new evidence and arguments in the circuit court.

We need not consider the motions because it is clear from the record that Jackson cannot prevail on appeal. We dismiss the appeal, and the motions are moot.

Jackson alleged in his habeas petition that the judgment and commitment order was void and facially invalid because the judge who signed the commitment order was not the judge who presided over his trial. He cites *Waddle v. Sargent*, 313 Ark. 539, 855 S.W.2d 919 (1993), for the proposition that once an order of assignment has been entered, the assignment deprives any other judge of authority to act in the proceedings. The Jefferson County Circuit Court denied the habeas petition, finding that both judges, the one who presided over the trial and the one who signed the commitment order, were elected in the same judicial district. The circuit court's ruling was based on its determination that both judges had authority to act within that district, citing *Lukach v. State*, 2018 Ark. 208, 548 S.W.3d 810, for the proposition that a challenge to the authority of a judge who is within the territorial boundaries of the judicial district that the judge serves does not raise an issue of subject-matter jurisdiction and is therefore not a claim cognizable in habeas proceedings.

An appeal from an order that denied a petition for postconviction relief, including an appeal from an order that denied a petition for a writ of habeas corpus, will not be permitted to go forward when it is clear that the appellant could not prevail. *Garrison v. Kelley*, 2018 Ark. 8, 534 S.W.3d 136. A circuit court, in proceedings other than those

under Act 1780 of 2001 Acts of Arkansas,<sup>1</sup> has personal jurisdiction over the prison officials who detain a prisoner seeking the writ, and it has authority to return the writ when that prisoner is incarcerated within the jurisdiction of the court from which he or she seeks the writ. *Muldrow v. Kelley*, 2018 Ark. 126, 542 S.W.3d 856. Any petition for writ of habeas corpus to effect the release of a prisoner is properly addressed to the circuit court in which the prisoner is held in custody, unless the petition is filed pursuant to Act 1780. *Dunahue v. Kelley*, 2018 Ark. 4, 534 S.W.3d 140. Arkansas Code Annotated section 16-112-105 (Repl. 2016) requires that the writ be directed to the person in whose custody the petitioner is detained. *Id.* Jackson was incarcerated within Jefferson County when he filed his habeas petition, and the circuit court would have had jurisdiction to enter the order under our statute at that time.

We need not determine whether the order is clearly correct based on the pleadings or whether the matter should nevertheless be briefed because the circuit court may no longer grant the relief that Jackson sought. A review of the record indicates that at some point after Jackson filed the habeas petition and before he filed his notice of appeal, Jackson was transferred to an Arkansas Department of Correction facility in Lincoln County. Because he is now incarcerated outside Jefferson County, regardless of where

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<sup>1</sup>Act 1780 of 2001 Acts of Arkansas, as amended by Act 2250 of 2005, provides habeas relief based on new scientific evidence. Ark. Code Ann. §§ 16-112-201 to -208 (Repl. 2016). Jackson did not seek scientific testing.

Jackson was incarcerated when the petition was filed or when the order was entered, a writ of habeas corpus issued by the Jefferson County Circuit Court could not now be returned. *Williams v. Kelley*, 2017 Ark. 198. Although a circuit court may have subject-matter jurisdiction to issue the writ, a court does not have personal jurisdiction to issue and make returnable before itself a writ of habeas corpus to release a petitioner held in another county. *Id.*

Appeal dismissed; motions moot.

HART, J., dissents.

**JOSEPHINE LINKER HART, Justice, dissenting.** On April 4, 2019, Mr. Jackson filed a motion to dismiss his appeal. In his motion, Mr. Jackson asserted that he had found more evidence to support his claims and new case law to support his arguments. Mr. Jackson requested this dismissal so that he could present this additional evidence and new case law to the circuit court. His motion for additional time to file his brief was filed on March 5, 2019. In that motion, he asserted that his prison work assignment conflicted with the hours of the Varner Unit law library. Yet, inexplicably, the majority has declined to grant Mr. Jackson's motion to dismiss and has instead decided to take his appeal on the merits.

First, until the briefing is complete, all this court has pending before it are Mr. Jackson's motion for an extension of time to file his brief and his motion to dismiss his

appeal. Because he has not yet filed his brief, his appeal is not perfected, and we do not have jurisdiction to decide his appeal on the merits.

The majority's dilatory disposition of Mr. Jackson's motions and precipitous decision to decide his appeal on the merits not only denies Mr. Jackson due process, it also utterly defies logic. I cannot understand why the majority chose to leap ahead and deny Mr. Jackson habeas relief when he had apprised the court that he had additional claims that he wished to consolidate at the circuit court level. It has long been settled that when an appellant takes a case to an appellate court, for a review of the judgment of a trial court, the appellant has a right to dismiss the appeal and submit to the judgment, if there is no prejudice to the appellee. *Bush v. Barksdale*, 122 Ark. 262, 183 S.W. 171 (1916). The State has not filed a response to Mr. Jackson's motion to dismiss.

Finally, the utter futility in the majority's actions is further proven by the fact that if Mr. Jackson has additional claims and new evidence, he is allowed to file a new petition for a writ of habeas corpus in the circuit court without fearing dismissal for abuse of the writ.

I respectfully dissent.