

ARKANSAS SUPREME COURT

No. CR 08-1437

Opinion Delivered April 9, 2009

JESSIE EARL HILL, III
Appellant

v.

STATE OF ARKANSAS
Appellee

PRO SE MOTION FOR EVIDENTIARY HEARING, AMENDED APPEAL, WRIT OF PROHIBITION AND WRIT OF MANDAMUS; PRO SE MOTION AND AMENDED MOTION FOR EXTENSION OF BRIEF TIME; PRO SE MOTIONS FOR APPOINTMENT OF COUNSEL, FOR DUPLICATION AT PUBLIC EXPENSE, TO FILE ENLARGED BRIEF AND TO SUPPLEMENT THE RECORD ON APPEAL [CIRCUIT COURT OF GRANT COUNTY, CR 95-38, HON. CHRIS E. WILLIAMS, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 1995, appellant Jessie Earl Hill, III, was convicted by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *Hill v. State*, 325 Ark. 419, 931 S.W.2d 64 (1996). Thereafter, appellant unsuccessfully pursued various postconviction remedies.¹

In 2008, he filed in the trial court a number of pro se pleadings seeking myriad types of postconviction and other relief. After a hearing, the trial court denied appellant's claims and

¹See *Hill v. State*, CR 05-834 (Ark. May 18, 2006) (per curiam) (affirming the denial of a petition for writ of habeas corpus pursuant to Act 1780 of 2001 filed in the trial court); *Hill v. State*, CR 96-720 (Ark. Mar. 13, 2008) (per curiam) (denying appellant's petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis filed in this court).

appellant has lodged a pro se appeal here from the order.

Now before us is a pleading captioned as appellant's pro se motion for an evidentiary hearing and seeking an "amended appeal," a petition for writ of prohibition and a petition for writ of mandamus. Appellant has also filed in this court a pro se motion and amended motion for an extension of time to file his brief-in-chief, and pro se motions for appointment of counsel, for duplication of his brief at public expense, to file an enlarged brief and to supplement the record on appeal. As appellant could not be successful on appeal, the appeal is dismissed and the motions are moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Leaks v. State*, 371 Ark. 581, 268 S.W.3d 866 (2007) (per curiam).

In the trial court, all of appellant's numerous pleadings requested scientific testing of evidence introduced at the criminal trial. Appellant's motion for an evidentiary hearing was specifically treated as a petition for writ of habeas corpus pursuant to Act 1780 of 2001, as amended by Act 2250 of 2005 and codified at Arkansas Code Annotated §§ 16-112-201–208 (Repl. 2006). Act 1780 provides that a writ of habeas corpus can be issued based upon new scientific evidence proving that a person is actually innocent of the offense or offenses for which he or she was convicted, and appellant sought DNA and fingerprint testing to allegedly prove his actual innocence.

A number of predicate requirements must be met before a circuit court can order that testing be done under the act. Ark. Code Ann. §§ 16-112-201–203. One requirement is that the type of scientific testing sought must not have been available at trial, but has become available through advances in technology. Ark. Code Ann. §§ 16-112-201(a)(1), 16-112-202.

In the underlying criminal matter, appellant was convicted of brutally murdering Arbrady

Moss by bludgeoning him with a marble rolling pin and a glass juice bottle. In the Act 1780 petition filed in the trial court, appellant maintained that no evidence directly linked him to the murder. He pointed to an unidentified fingerprint on the marble rolling pin as belonging to the true accomplice of his codefendant, DeMarcus Tatum. He sought fingerprint testing to identify the alleged true accomplice which he claimed would exonerate him of committing the murder. Appellant also claimed that his blood from a facial injury would have been deposited on the rolling pin had he committed the murder. He maintained that DNA testing on the rolling pin would reveal the lack of his blood and would thus establish his innocence.²

At the hearing on appellant's Act 1780 petition, witnesses testified that fingerprint and DNA testing was available at the time appellant was tried for this crime. Although the Arkansas State Crime Laboratory ("crime lab") did not conduct DNA testing then, the crime lab provided to the defense the contact information for labs that did provide such testing. Thus, the scientific testing sought by appellant was available at the time of his trial. In the Act 1780 petition, appellant failed to seek scientific testing that was not available at the time of his trial pursuant to section 16-112-201(a)(1).

Furthermore, petitioner has previously sought the same type of testing in the previous Act 1780 petition that he filed in 2003. In denying the prior petition, the trial court likewise found that the testing sought was not new or novel as it was available at the time of his trial. Appellant is therefore precluded from seeking the same type of scientific testing in the petition at issue in this appeal pursuant to the law-of-the-case doctrine. *Green v. State*, 343 Ark. 244, 33 S.W.3d 485

²Although appellant complains that the state failed to produce direct evidence of his guilt, circumstantial evidence may constitute substantial evidence to support a conviction. *Flowers v. State*, 373 Ark. 127, ___ S.W.3d ___ (2008).

(2000). This doctrine dictates that an issue raised and concluded in a prior appeal decision may not be revisited in a subsequent appeal as the matter becomes res judicata. *Id.* (citing *Mode v. State*, 234 Ark. 46, 350 S.W.2d 675 (1961); *Bowman v. State*, 93 Ark. 168, 129 S.W. 80 (1909); *Perry v. Little Rock & Fort Smith Railway Co.*, 44 Ark. 383 (1884)). Law of the case applies even if the prior decision was wrongly decided. *Green v. State, supra* (citing *Rankin v. Schofield*, 81 Ark. 440, 98 S.W. 674 (1905)).

At the hearing, the trial court also allowed appellant to present evidence in support of his claim of malicious prosecution based upon assorted theories asserted throughout his pleadings. In the order that denied appellant's request for scientific testing, the trial court also found no merit to the malicious prosecution allegations. As with his Act 1780 petition, appellant would not be successful on appeal if the claim were allowed to proceed.

A malicious prosecution claim is a civil remedy for which compensatory and punitive damages may be awarded. *South Arkansas Petroleum Co. v. Schiesser*, 343 Ark. 492, 36 S.W.3d 317 (2001). Appellant was not seeking an award of money damages based upon his claim, but sought, *inter alia*, dismissal of the underlying felony information and his acquittal of the criminal charge set out in the information.

Furthermore, malicious prosecution requires proof that the criminal charges filed against the plaintiff in the cause of action were terminated in favor of the plaintiff. *Id.* In this matter, appellant was convicted of capital murder, so he would not be able to show that the criminal case against him was terminated for any reason. Therefore, appellant could not sustain this argument on appeal.

As to the other types of relief sought,³ appellant failed to obtain rulings on those claims from

³In addition to the causes of action listed above, the pleadings filed by appellant in the trial court included (1) a petition for writ of mandamus, (2) a petition pursuant to Arkansas Rule of Criminal

the trial court. It was incumbent upon him to obtain a ruling for each claim that he raised in order to preserve his arguments for appeal. *Otis v. State*, 364 Ark. 151, 217 S.W.3d 839 (2005).

Appeal dismissed; motions moot.

Procedure 37.1, (3) a motion to vacate and set aside the judgment, to correct a sentence imposed in an illegal manner and for a new trial, (4) a motion for oral argument, to correct the record and to strike various pleadings filed by the State, (5) a motion to compel that pertained to non-party witnesses, (6) a motion for appointment of counsel and (7) a motion for acquittal, for newly discovered evidence and to dismiss the felony information. Appellant also filed several replies to the responses filed by the State that contained further claims for relief.