

SUPREME COURT OF ARKANSAS

Cooper v. Hobbs

2013 Ark. 342 (2013) · No. CR-13-303 · Decided September 19, 2013

SUMMARY

The Arkansas Supreme Court dismissed Gary Dwayne Cooper’s appeal from the denial of his habeas corpus petition and treated his motion for belated appeal as a motion to file a belated brief, rendering it moot. The court held that the Garland County Circuit Court lacked personal jurisdiction because Cooper was incarcerated in Hot Spring County when he filed the petition, and therefore he could not prevail on appeal.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	September 19, 2013
DOCKET	CR-13-303
DISPOSITION	dismissed
PROCEDURAL POSTURE	Cooper appealed the Garland County Circuit Court's denial of his petition for a writ of habeas corpus and moved for permission to pursue a belated appeal or file a belated brief.
STANDARD OF REVIEW	An appeal from an order denying postconviction relief, including an order concerning a habeas petition, will not be permitted to proceed when it is clear that the appellant cannot prevail.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Gary Dwayne Cooper v. Ray Hobbs, Director, Arkansas Department of Correction

TOPICS

- state post-conviction relief
- habeas corpus
- appellate procedure
- appellate jurisdiction
- post-conviction relief

PRACTICE AREAS

- appellate procedure
- state post-conviction relief
- habeas corpus
- criminal procedure

QUESTIONS PRESENTED

1. Whether Cooper's appeal from the denial of his habeas petition could proceed when the petition was filed in a county other than the county where he was held in custody.
2. Whether Cooper's motion for a belated appeal should be treated as a motion to file a belated brief and, if so, whether it was moot after dismissal of the appeal.

HOLDINGS

1. A state habeas petition must generally be filed in the circuit court of the county where the petitioner is held in custody, and the court must have personal jurisdiction over the petitioner and the custodian; because Cooper was confined in Hot Spring County and did not proceed under Act 1780, the Garland County Circuit Court lacked jurisdiction.
2. An appeal from the denial of postconviction relief, including an appeal concerning a habeas petition, will not be allowed to proceed when it is clear that the appellant cannot prevail; because the circuit court lacked personal jurisdiction, Cooper could not prevail and the appeal was dismissed.

KEY QUOTATIONS

“A petition for writ of habeas corpus is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001, as amended by Act 2250 of 2005 and codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006).” (2)

“An appeal of the denial of postconviction relief, including an appeal from an order that pertained to a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail.” (2)

FACTUAL BACKGROUND

Cooper pleaded guilty to two rape counts in Garland County in 2006 and received an aggregate 360-month prison sentence. In 2013, he was incarcerated at the Arkansas Department of Correction's Ouachita River Unit in Hot Spring County when he filed a habeas petition in Garland County. Because he was not held in Garland County and the petition was not brought under Act 1780, the Garland County Circuit Court lacked personal jurisdiction to issue and make returnable the writ.

PROCEDURAL HISTORY

In 2006, Cooper pleaded guilty in Garland County Circuit Court to two counts of rape and received an aggregate sentence of 360 months' imprisonment. In 2013, while incarcerated at the Ouachita River Unit in Hot Spring County, he filed a habeas petition in Garland County, which denied the petition. He lodged an appeal in the Arkansas Supreme Court; the court treated his motion as one to file a belated brief, dismissed the appeal, and declared the motion moot because the circuit court lacked personal jurisdiction over the habeas proceeding and Cooper could not prevail.

DISPOSITION

dismissed

CASES CITED

- Williams v. Norris, 2012 Ark. 30 (per curiam)
- Borum v. State, 2011 Ark. 415 (per curiam)
- Wilencewicz v. Hobbs, 2012 Ark. 230 (per curiam)
- Watts v. Norris, 2009 Ark. 473 (per curiam)
- Lukach v. State, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam)
- State Dep't of Pub. Welfare v. Lipe, 257 Ark. 1015, 521 S.W.2d 526 (1975)
- Johnson v. McClure, 228 Ark. 1081, 312 S.W.2d 347 (1958)
- State v. Ballard, 209 Ark. 397, 190 S.W.2d 522 (1945)

OPINION

PER CURIAM.

Cite as 2013 Ark. 342 SUPREME COURT OF ARKANSAS No. CR-13-303 Opinion Delivered September 19, 2013 GARY DWAYNE COOPER PRO SE MOTION FOR BELATED APPELLANT APPEAL [GARLAND COUNTY CIRCUIT COURT, 26CR-06-358, 26CR- V. 06-494, HON. JOHN HOMER WRIGHT, JUDGE] RAY HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION APPELLEE APPEAL DISMISSED; MOTION TREATED AS MOTION TO FILE BELATED BRIEF MOOT.

PER CURIAM In 2006, appellant Gary Dwayne Cooper entered a plea of guilty in the Garland County Circuit Court to two counts of rape. An aggregate sentence of 360 months' imprisonment was imposed. In 2013, appellant filed a pro se petition for writ of habeas corpus in the trial court in Garland County. When the petition was filed, appellant was incarcerated at a unit of the Arkansas Department of Correction located in Hot Spring County.

The trial court found no merit to the petition and denied it. Appellant lodged an appeal from that order in this court, and now before us is appellant's motion, which he styled as a motion for belated appeal. As the motion seeks to file a belated brief, it is treated as such.

The appeal is dismissed, and the motion is moot. An appeal of the denial of postconviction relief, including an appeal from an order that pertained to a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. See Williams v. Norris, 2012 Ark. 30 (per curiam). Cite as 2013 Ark. 342 A petition for writ of habeas corpus is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001, as amended by Act 2250 of 2005 and codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl.

2006). *Borum v. State*, 2011 Ark. 415 (per curiam). Arkansas Code Annotated section 16-112-105 requires that certain procedural requirements be met by a petitioner asking a court to issue a writ of habeas corpus. The writ must be directed to the person in whose custody the prisoner is detained. *Id.* Additionally, the writ should be issued by a court that has personal jurisdiction over the defendant.

Wilencewicz v. Hobbs, 2012 Ark. 230 (per curiam). In the present matter, appellant was in the custody of the Arkansas Department of Correction at the Ouachita River Unit in Hot Spring County when he filed the petition in Garland County.

As appellant's petition for writ of habeas corpus was not filed pursuant to Act 1780, the Garland County Circuit Court did not have personal jurisdiction to issue and make returnable a writ of habeas corpus because petitioner was not in custody within the court's jurisdiction. See *Wilencewicz*, 2012 Ark. 230; see also *Watts v. Norris*, 2009 Ark. 473 (per curiam); *Lukach v. State*, 369 Ark.

475, 255 S.W.3d 832 (2007) (per curiam). The writ could not have been directed to a custodian with immediate physical custody of the prisoner to effect the release of the prisoner. See *Borum*, 2011 Ark. 415; *Watts*, 2009 Ark. 473; see also *State Dep't of Pub. Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975); *Johnson v. McClure*, 228 Ark. 1081, 312 S.W.2d 347 (1958); *State v. Ballard*, 209 Ark.

397, 190 S.W.2d 522 (1945). Accordingly, appellant could not succeed on appeal from the order. 2 Cite as 2013 Ark. 342 Appeal dismissed; motion treated as motion to file belated brief moot. Gary Dwayne Cooper, pro se appellant. No response. 3