

**IN THE SUPREME COURT OF ARKANSAS**

**DAMIEN ECHOLS**

**APPELLANT**

**VS.**

**CASE NO. CR-22-670**

**STATE OF ARKANSAS**

**APPELLEE**

**MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION FOR  
EXTENSION OF TIME TO FILE A BRIEF**

1. Appellant Damien Echols is appealing from the Crittenden County Circuit Court’s denial of his petition for writ of habeas corpus under Act 1780 of 2001. His conviction, however, was entered in the Craighead County Circuit Court in case number CR-93-540A. (RP 82-85). Under Ark. Code Ann. § 16-112-201(a) (Repl. 2016), an Act 1780 habeas petition must be filed in the circuit court where the judgment of “conviction was entered.” Because Echols filed his petition in the wrong county, this Court should dismiss for lack of jurisdiction. *See Culbertson v. State*, 2012 Ark. 112, at 3 (dismissing Culbertson’s appeal from the denial of a petition for habeas corpus relief filed under Act 1780 when the petition was filed in the county of incarceration, not the county of conviction).

2. In 1993, three eight-year-old boys were brutalized, mutilated, and murdered in West Memphis. *Echols v. State (Echols I)*, 326 Ark. 917, 935, 936 S.W.2d 509, 516 (1996). Echols, Jessie Misskelley, and Jason Baldwin were convicted of the boys' murders, and Echols was sentenced to death. *Id.* at 937, 936 S.W.2d at 517. Echols unsuccessfully challenged his convictions and death sentence for years. *See Echols v. State (Echols III)*, 2010 Ark. 417, at 1-4, 373 S.W.3d 892, 895-96. Then in 2010, this Court remanded the case to the Craighead County Circuit Court<sup>1</sup> for the trial court to hold an evidentiary hearing on Echols's motion for a new trial pursuant to Ark. Code Ann. § 16-112-208(e), based on the results from additional DNA testing. *Echols III*, 2010 Ark. 417, at 15-16, 373 S.W.3d at 902.

3. On August 19, 2011, upon remand from this Court, the trial court, the Craighead County Circuit Court, entered a conditional order for a new trial, vacating Echols's convictions and death sentence. (RP 96-97). Afterwards, Echols entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to three counts of first-degree murder. (RP 77-78). As a result of the plea,

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<sup>1</sup> The murders were committed in Crittenden County. However, Echols received a change of venue to Craighead County, where he was tried and convicted. *See Echols v. State (Echols II)*, 354 Ark. 530, 559, 127 S.W.3d 486, 505 (2003).

Echols was released from prison for time served plus an additional 10 years' suspended imposition of sentence. (RP 79-85, 134).

4. Subsequently, on January 24, 2022, over a decade after his release from prison, Echols filed in the Crittenden County Circuit Court a petition for habeas corpus relief for additional DNA testing pursuant to Act 1780 of 2001, codified at Ark. Code Ann. §§ 16-112-201 – 208 (Repl. 2016). (RP 26-38). Echols sought testing of the ligatures<sup>2</sup> used to bind the children using a new method of DNA collection called the M-Vac wet vacuum system. (RP 26). Echols, the State responded, failed to meet the statutory requirements for a writ of habeas corpus. (RP 52-62). Relevant here, the State identified a “fatal” error in the petition—Echols filed the petition in the wrong county. (RP 53). A habeas petition under Act 1780, it explained, had to be filed in the county where his conviction was entered, which was Craighead County. (RP 53).

5. The Crittenden County Circuit Court held a hearing on Echols's habeas corpus petition on June 23, 2022. (RT 1). At the beginning of the hearing, the parties waived venue for purposes of the habeas hearing. (RT 7) (RP 178) (finding that the State waived venue for purposes of the hearing). Afterwards, the

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<sup>2</sup> “All three corpses had their right hands tied to their right feet, and their left hands tied to their left feet. Black shoe laces and white shoe laces were used as ligatures.” *Echols I*, 326 Ark. at 935-36, 936 S.W.2d at 516.

circuit court denied Echols’s habeas petition in an order entered on June 28, 2022. (RP 178-180). It found that “the legislature amended statutory law to make scientific testing based on new technology a form of habeas corpus relief,” as opposed to an “independent form of post-conviction relief.” (RP 179). Because Echols was not in custody, the circuit court concluded, it lacked jurisdiction to grant him habeas corpus relief in the form of additional DNA testing. (RP 180). This appeal follows.

6. This Court, however, lacks jurisdiction over this appeal because Echols filed his petition for writ of habeas corpus under Act 1780 of 2001 in the wrong county. He should have filed the petition in the Craighead County Circuit Court—the county of conviction. Because the Crittenden County Circuit Court lacked jurisdiction below, so, too, does this Court. *See Newton v. State*, 2014 Ark. 538, at 4, 453 S.W.3d 125, 128 (stating that “[w]hen the trial court lacks jurisdiction, the appellate court also lacks jurisdiction”).

7. A petition for writ of habeas corpus filed under Act 1780 of 2001 must be filed in the circuit court where the judgment of “conviction was entered.” Ark. Code Ann. § 16-112-201(a); *Dobbins v. State*, 2022 Ark. 123, at 7, 644 S.W.3d 419, 425. Section 16-112-201(a) “vests jurisdiction in the trial court.” *Clemons v. State*, 2013 Ark. 18, at 2. Stated another way, a circuit court where the conviction was *not* entered does not have jurisdiction to consider such a habeas

petition. *Hill v. Kelley*, 2018 Ark. 118, at 4, 542 S.W.3d 852, 855 (concluding that the Lincoln County Circuit Court lacked jurisdiction to address Hill’s claim for habeas relief pursuant to Act 1780 because his conviction was entered in the Grant County Circuit Court); *Muldrow v. Kelley*, 2018 Ark. 126, at 3-4, 542 S.W.3d 856, 858 (holding that “the Lincoln County Circuit Court did not have jurisdiction under Act 1780” to hear Muldrow’s claims for the writ because he was challenging a conviction from the Hempstead County Circuit Court).

8. In its response to Echols’s habeas petition under Act 1780, the State asserted that the petition was not filed in the county of conviction as required by § 16-112-201(a). (RP 53). Then, at the beginning of the hearing, the parties discussed whether venue was proper in the Crittenden County Circuit Court or if the hearing needed to be postponed and moved to the Craighead County Circuit Court. (RT 5-7). The parties agreed that the hearing could take place in the Crittenden County Circuit Court. (RT 6-7) (RP 178) (finding that the State waived venue for purposes of the hearing). The State, however, did not, nor could it, waive subject-matter jurisdiction over the habeas proceeding. *See Renshaw v. Norris*, 337 Ark. 494, 499, 989 S.W.2d 515, 518 (1999) (explaining that the parties “cannot waive a court’s lack of subject-matter jurisdiction”).

9. Venue and jurisdiction are distinct legal concepts, but often are used interchangeably. *Meny v. Norris*, 340 Ark. 418, 422, 13 S.W.3d 143, 145 (2000).

“Venue is the geographic area, like a county, where an action is brought to trial.” *Id.* Subject-matter jurisdiction, on the other hand, is the “power or authority of a court to hear a case on its merits.” *State v. Dawson*, 343 Ark. 683, 694, 38 S.W.3d 319, 326 (2001). Unlike venue, subject-matter jurisdiction cannot be conferred by consent of the parties, nor can it be waived. *State v. J.B.*, 309 Ark. 70, 72, 827 S.W.2d 144, 145 (1992); *see also Meny*, 340 Ark. at 422, 13 S.W.3d at 145. Further, subject-matter jurisdiction can be raised for the first time on appeal. *Herron v. Arkansas Dep’t of Corr.*, 2022 Ark. 220, at 3, 655 S.W.3d 518, 519; *see also State v. Wilmoth*, 369 Ark. 346, 350 n.1, 255 S.W.3d 419, 422 n.1 (2007) (stating that the issue of a circuit court’s subject-matter jurisdiction “is always open, cannot be waived, can be questioned for the first time on appeal, and can even be raised by this court”).

10. Although the murders of the three eight-year-old boys occurred in Crittenden County, Echols requested, and was granted, a change of venue to Craighead County. *Echols II*, 354 Ark. at 559, 127 S.W.3d at 505. As a result, he was tried and convicted in Craighead County, and, after his convictions and sentence were vacated, he entered an *Alford* plea in the Craighead County Circuit Court. (RP 77-85). Thus, the county where his conviction was entered is Craighead County, not Crittenden County. (RP 77-85). The only court with jurisdiction to address the claims in Echols’s habeas petition pursuant to Act 1780

was the Craighead County Circuit Court. Because Echols filed his habeas petition in the wrong county, the Crittenden County Circuit Court lacked jurisdiction over the proceedings. Consequently, this Court, too, lacks jurisdiction, and the appeal should be dismissed.

11. Alternatively, in the event this Court denies the motion to dismiss, the State respectfully requests that it be allowed a period of 21 days from the date of the entry of an order denying its motion in which to file its responsive brief. The State has had one previous extension of its brief time totaling 21 days.

WHEREFORE, the State respectfully requests that this appeal be dismissed for lack of jurisdiction. Alternatively, the State respectfully asks for a period of 21 days from the date of entry of an order denying its motion to dismiss in which to file its responsive brief.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Brooke Jackson Gasaway, certify that on February 21, 2023, I electronically filed the foregoing document with the Clerk of the Court using the eFlex system which shall send notification of such filing, which is deemed service, to:

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