IN THE SUPREME COURT OF ARKANSAS

DAMIEN ECHOLS **APPELLANT**

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

STATE OF ARKANSAS **APPELLEE**

On Appeal from the Circuit Court of Crittenden County, Sixth Division
No. 18CR-93-516 (Hon. Tonya Alexander)

Appellee's Brief

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TABLE OF CONTENTS

POINTS ON APPEAL

1. Should this reverse and dismiss where Echols filed his Act 1780 petition in a circuit court that lacked jurisdiction to consider it?
2. Is habeas corpus relief under Act 1780 limited to individuals in state custody?
3. Should this Court reaffirm its holding that a defendant cannot his conviction on actual-innocence grounds after pleading guilty?
4. Should this Court affirm the circuit court's dismissal on the alternative ground that Echols failed to verify his petition as required by Act 1780?

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

JURISDICTIONAL STATEMENT

The circuit court lacked jurisdiction over this case because it is not the court where Echols' "conviction[s] w[ere] entered," as required by Ark. Code Ann. 16-112-201(a). This Court lacks jurisdiction, too. *See Newton v. State*, 2014 Ark. 538, at 4 ("When the trial court lacks jurisdiction, the appellate court also lacks jurisdiction").

As between this Court and the Court of Appeals, jurisdiction is appropriate here because this Court decided Echols' prior appeals. Ark. R. Sup. Ct. 1-2(a)(7).

STATEMENT OF THE CASE AND THE FACTS

Damien Echols was convicted of capital murder and sentenced to death for his role in the brutal mutilation and murder of three eight-year-old boys. *Echols v. State*, 326 Ark. 917 (1996). Years of litigation ensued in which Echols unsuccessfully challenged his convictions and sentences, culminating in an agreement between Echols, his co-defendants, and the State to finally put the matter to rest. Echols was released from prison in exchange for a guilty plea to first-degree murder after spending eighteen years in prison. Yet over a decade after his release, Echols now seeks to further waste judicial resources to challenge the conviction he negotiated for. He should not be allowed to. The General Assembly made post-conviction DNA testing available to set free innocent prisoners, not recenter the limelight on freed felons.

This is not Echols' first petition under Act 1780 of 2001. His first was filed shortly after the law's passage and resulted in additional DNA testing being performed. *See Echols v. State*, 2010 Ark. 417, at 14-15. After remand from this Court for proceedings concerning whether a new trial should be granted, the State, Echols, and his co-defendants negotiated an agreement that would lead to their release from prison. The circuit court conditionally granted the three defendants a new trial under Act 1780 and allowed them to plead guilty under *North Carolina v. Alford*, 400 U.S. 25 (1970), to three counts of first-degree murder. (RP 77-78).

Echols had previously been convicted of capital murder and sentenced to death. As a result of the plea, Echols was released from prison for time served plus an additional 10 years' suspended imposition of sentence. (RP 79-85, 134). Echols continued to maintain his innocence despite acknowledging the legal effect of his guilty plea.

Over ten years went by before Echols filed another petition under Act 1780. Problems arose immediately. For one, Echols filed the petition in the wrong county. (RP 53). The State pointed out that a habeas petition under Act 1780 must be filed in the county where his conviction was entered, which was Craighead County. (RP 53). This error was inexplicable as Echols filed in the right court the first time he filed a petition under Act 1780. The circuit court should have dismissed the petition for lack of jurisdiction, but the parties treated the requirement as venue-esque instead of jurisdictional and purported to waive it. (RT 7) (RP 178) (finding that the State waived venue for purposes of the hearing).

There was another error that the State did not point out (though this Court can nevertheless reach it here). His petition was not verified under penalty of perjury as required by the Act, nor was it even notarized as this Court has at times allowed instead. (RP 26-51). The circuit court could have dismissed Echols' petition for that reason alone.

The circuit court did dismiss Echols' petition, but for a different reason. (RP 178-180). It concluded 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, he was ineligible for habeas corpus relief. (RP 180).

This appeal followed. The State moved to dismiss for lack of jurisdiction due to Echols filing his petition in the wrong court, but that motion was denied.

STANDARD OF REVIEW

"A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous." *Hill v. Kelley*, 2018 Ark. 118, 3-4.

ARGUMENT

This Court should reverse and dismiss the decision below for lack of jurisdiction because Echols filed his petition in the wrong Court. If not, the Court should affirm the circuit court's denial of relief. The circuit court was correct when it read Act 1780 as limited to individuals currently in state custody, as opposed to those who have already been released. Alternatively, the Court can affirm on two alternative grounds not addressed below: 1) this Court's precedents foreclose relief under Act 1780 to challenge a guilty plea; and 2) this Court can affirm the circuit court's denial of relief due to Echols' failure to properly verify his petition.

I. This Court lacks jurisdiction because Echols filed his petition in the wrong court.

The first time Echols filed an Act 1780 petition, he filed in the correct court—the Craighead County Circuit Court, where his conviction was entered. *See Echols v. State*, 2012 Ark. 417. This time, he inexplicably filed in Crittenden County Circuit Court instead. This Court declined to dismiss for lack of jurisdiction at the motions stage, but it should nevertheless do so now.

Act 1780 petitions must be filed "in the court in which the conviction was entered." Ark. Code Ann. 16-112-201(a); *see also* Ark. Code Ann. 16-112-205(b) ("Hearings on a petition filed pursuant to this subchapter shall be open and shall be held in the court in which the conviction was entered."). Section 201(a) is not a waivable venue requirement; this Court has held that the provision "vests jurisdiction" within the circuit court of conviction. In *Clemons v. State*, the Court reversed a circuit court's dismissal of a prisoner's Act 1780 petition because, as the court of conviction, it "did have jurisdiction." 2013 Ark. 18, at 2. Likewise, in *Hill v. Kelley*, the Court affirmed a circuit court's dismissal of an Act 1780 petition where the challenged conviction was entered in a different county. 2018 Ark. 118, at 3-4. That is because only the court of conviction has "jurisdiction under Act 1780." *Muldrow v. Kelley*, 2018 Ark. 126, at 4. Echols has not identified, and the State is not aware of, any Act 1780 case that this Court has allowed to proceed in a circuit court besides the court of conviction.

Despite this Court's unflagging reference to Section 201(a) as a jurisdictional provision, Echols mistakes it for a waivable venue provision. In so doing, he confuses a circuit court's power to consider a given Act 1780 petition with a judge's authority to preside, the territorial limits of the court's jurisdiction, and venue requirements.

A circuit judge's authority to preside over cases extends throughout the "geographical area of the judicial circuit which he or she serves as judge," rather than being limited to any particular county within the circuit. Ark. Code Ann. 16-13-210(a)(1). This within-circuit limitation is jurisdictional and cannot be waived by the parties. *See Cloird v. State*, 349 Ark. 33, 41 (2002).

On the other hand, a circuit court's "territorial" or "local" jurisdiction—in criminal cases, limited to offenses occurring in the court's respective county—is waivable and thus more accurately described as a venue provision than truly jurisdictional. Ark. Code Ann. 16-88-105(b); *see Williams v. State*, 2020 Ark. 199, at 4-5. General venue for proceedings is similarly limited to the county in which the court sits but may be waived by the parties. Ark. Code Ann. 16-13-210(a)(2). Because of these similarities, "the terms 'venue' and 'jurisdiction'"—in the territorial or local sense—"are often used interchangeably." *State v. Osborn*, 345 Ark. 196, 199 (2001).

Echols argues that because Crittenden County is within the same judicial circuit as Craighead County there is no jurisdictional issue. But that distinction matters only for a circuit judge's power to generally hear matters assigned to courts in other counties within his or her judicial circuit. *See* Ark. Code Ann. 16-13-210(a)(1). It has nothing to do with whether a particular *court* has the power to entertain a case before it. Put another way, if a Craighead County circuit judge had

presided over the case below in the Crittenden County Circuit Court, jurisdiction would still be lacking because Echols filed his petition in the wrong *court* under Ark. Code Ann. 16-112-201(a). On the other hand, if Echols had properly filed his petition in Craighead County Circuit Court, Judge Alexander could have presided in that court pursuant to Ark. Code Ann. 16-13-210(a)(1).

Finally, Echols argues that the State is culpable for the circuit court proceeding to consider his petition, rather than transferring the case to Craighead County, and should not get the benefit of reversal. On the contrary, the State raised the issue of jurisdiction at the outset of the case. (RP 53). The State did agree to waive the issue of venue for purposes of a hearing on the petition, but it did not—and critically, absolutely could not—waive jurisdictional considerations. (RT 6-7) (RP 178). In any case, the fault ultimately lies with Echols for failing to file his second Act 1780 petition in the correct court, despite having done so successfully the first time around.

The circuit court, and thus this Court, lack jurisdiction over Echols' petition, and this appeal, and it should therefore be dismissed.

II. Echols cannot file a habeas corpus petition under Act 1780 because he is no longer in state custody.

The circuit court correctly concluded that Echols cannot bring a habeas petition under Act 1780 because he is not in state custody.

Arkansas's post-conviction DNA testing procedures weren't accidentally placed under the umbrella of a writ of habeas corpus rather than being made a standalone provision. Rather, the General Assembly made a conscious choice to legislate against the backdrop of the habeas framework, including the limitation of the availability of the writ to those in state custody.

"'Habeas corpus,' literally translated, means, 'You have the body.'" *State Dep't of Pub. Welfare v. Lipe*, 257 Ark. 1015, 1017 (1975). A traditional writ of habeas corpus is issued against the person having physical custody of the petitioner, requiring them to "bring the body of the petitioner." Ark. Code Ann. 16-112-110. Habeas relief has thus always been limited to those in custody. *See Curtis v. Hobbs*, 2015 Ark. 127, at 1 ("A circuit court does not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody.").

Historically Arkansas's habeas statute provided relief only to those who can show they are either (1) "detained without lawful authority"; or (2) "imprisoned when by law" they are "entitled to bail." Ark. Code Ann. 16-112-103(a). Claims based on actual innocence were, prior to Act 1780, not cognizable in habeas proceedings. *See, e.g.*, *Clay v. Kelley*, 2017 Ark. 294, at 3. Instead, challenges to the sufficiency of the evidence supporting a conviction were dealt with on direct appeal. *Id.*

But the General Assembly in enacting Act 1780 added a third claim that may be pursued in habeas. As amended, Section 103 provides that "[t]he writ of habeas corpus shall be granted . . . to any person who shall apply for the writ by petition . . . who has alleged actual innocence of the offense or offenses for which the person was convicted." Ark. Code Ann. 16-112-103(a)(1). Thus, rather than providing a freestanding civil cause of action, the General Assembly tied actual-innocence claims to a form of relief that has for hundreds of years been premised on freeing a petitioner from unlawful government custody.

In addition to expanding the claims that can be pursued in habeas, the Act establishes procedures for facilitating the presentation of new scientific evidence to be introduced in furtherance of a habeas petition asserting actual innocence. Section 103 specifies that "[t]he procedures for persons who allege actual innocence shall be in accordance with Ark. Code Ann. 16-112-201 *et seq*." Ark. Code Ann. 16-112-103(a)(2).

Though these sections appear in a separate subchapter of the Code today, it was not enacted in that manner. Rather, the General Assembly followed the sequence of the original habeas statute, intending the subchapter to continue from Section 123 (the last section of the original habeas statute) to Section 124 (what is,

today, codified at Section 201) and onward.[1] However, the Arkansas Code Revision Commission (a separate body from the General Assembly) decided to re-codify the sections created by Act 1780 into a new subchapter. *See* Ark. Code Ann. 1-2-303. Thus, as originally crafted, Arkansas's habeas corpus law was intended to reside in a single subchapter of the Code, underscoring the harmony between those provisions.

Further underscoring Act 1780's standing as a habeas corpus statute, in passing Act 2250 of 2005, which amended some of the Act's procedures, the General Assembly chose to retitle Section 201, which had previously read "Appeals -- New Scientific Evidence," to instead read "Writ of Habeas Corpus - New scientific evidence."[2]

Echols argues that the General Assembly departed from hundreds of years of settled understanding of habeas corpus law and made habeas petitions under Act

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[1] Act 1780 of 2001 is available at https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2001%2FPublic%2FACT1780.pdf.

[2] Act 2250 of 2005 is available at https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2005%2FPublic%2FACT2250.pdf.

1780 available to anyone with a criminal conviction regardless of whether they remain in custody. Echols' primary textual argument focuses on Section 201(a), the beginning of Act 1780's procedures. That section provides that "a person convicted of a crime may commence a proceeding to secure relief by filing a petition." Ark. Code Ann. 16-112-201(a). They must do so "in the court in which the conviction was entered," and they cannot do so "when direct appeal is available." *Id.* Section 201 also specifies the relief that may be sought. *Id.*

Echols makes two primary claims about this passage of text. First, he claims that the phrase "a person convicted of a crime" defines the scope of who may file an Act 1780 petition. Second, he claims the inclusion of "other disposition as may be appropriate" in the relief available shows that relief is not limited to persons in state custody.

On the first point, Echols is wrong that the General Assembly's choice of the phrase "a person convicted of a crime" was meant to define the universe of eligible Act 1780 petitioners. Read as a whole, Section 201 instead establishes the procedural requirements that Act 1780 petitioners must meet, including where to file their petitions, the relief they must seek, and the claims they must make under penalty of perjury to verify their petitions. *Id*. (Indeed, that is what Section 103(a)(2) says that Sections 201 onward do.) Being "convicted of a crime," as opposed to

already having one's conviction vacated, is certainly a necessary condition for filing an Act 1780 petition, but it is not a sufficient one considering the Act as a whole.

Section 103(a) is determinative as to who exactly are eligible habeas petitioners. After all, that section has historically served that purpose prior to the passage of Act 1780. As noted above, that section provides that a "writ" shall be granted to "any person . . . detained without lawful authority, [] imprisoned when by law he or she is entitled to bail, or who has alleged actual innocence of the offense or offenses for which the person was convicted." Ark. Code Ann. 16-112-103(a). Importantly, the "writ" that is being granted is a writ of habeas corpus, which for hundreds of years has been used to release detained individuals from unlawful custody, and for which being in custody is a prerequisite. If the General Assembly had meant to allow for actual-innocence claims to be brought outside of the traditional universe of habeas relief, it could have simply located the text elsewhere, but it chose to modify Section 103. That choice must mean something.

And the only way to read Section 103(a) as a harmonious whole is to conclude that Act 1780 did not expand the universe of people eligible to file a habeas petition, *i.e.* those who are in state custody, but instead expanded the legal theories on which a petitioner can succeed to include actual innocence (a claim that has historically been outside the scope of habeas review). If the General Assembly had

meant to depart from the foundational norms of habeas corpus doctrine, it presumably would have been clearer about its intent. Thus, Echols is incorrect that Section 201 must be read to render the rest of the habeas statute nonsensical.

Turning to Echols' second textual argument concerning Section 201(a), it, too, fails. The text specifies that a petitioner may seek the following relief from the circuit court:

- "to vacate and set aside the judgment and":
    - "to discharge the petitioner or"
    - "to resentence the petitioner or"
    - "grant a new trial or"
    - "correct the sentence or"
    - "make other disposition as may be appropriate."

Ark. Code Ann. 16-112-201(a). That provision unsurprisingly contemplates vacatur and setting aside a judgment to be a component of every successful Act 1780 petition. It then gives five disjunctive options for additional relief, connected by an "and" to vacatur. Thus, Section 201(a) does not contemplate the mere setting aside of a conviction on the basis of actual innocence. Some other relief must accompany it.

Save for "other disposition as may be appropriate," every potential form of additional relief an Act 1780 petitioner may seek is applicable only to someone in

custody. "Discharge" speaks for itself; only someone currently under a criminal sentence can be "resentenced" or have their sentence corrected; and a person (like Echols) who has served his sentence to completion is not in a position to seek a new trial. If that were the complete list, it would be more than obvious that Act 1780 contemplates petitioners always being in state custody. So Echols argues, as he must, that "other disposition as may be appropriate" broadens the available relief beyond custody-related actions, perhaps to anything sufficiently connected to "justice" or "exoneration." Br. at 31.

Ordinary principles of statutory interpretation dictate otherwise. The *ejusdem generis* canon of construction provides a ready answer to how this language must be read. The canon applies to particularized lists followed by a broader, generic phrase (such as Section 201(a)'s list of specific custody-centered relief followed by the more general "other disposition"). *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 200 (2012). "Where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Wash. State Dept. of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003); *see also Edwards v. Campbell*, 2010 Ark. 398, at 5 (2010) (same); *Arkansas Times LP v.*

Waldrip as Tr. of Univ. of Arkansas Bd. of Trustees, 37 F.4th 1386, 1393 (8th Cir. 2022) (applying *ejusdem generis* to interpret Arkansas statute).

Section 201(a)'s inclusion of "other disposition as may be appropriate" is thus not an unmoored catchall provision, as Echols suggests. Instead, it must be read in light of the preceding items, all of which are forms of relief only applicable to those in custody, *i.e.*, proper habeas petitioners. That language simply means that, in addition to vacating and setting aside a petitioner's judgment of conviction, a circuit court may issue whatever orders appropriate to cure the unjust commitment.

Echols' remaining defenses of his nonsensical statutory construction are even more meritless. Echols' focus on the two "different" subchapters of the habeas chapter, Br. at 28, is misplaced because, as noted above, the General Assembly did not enact an additional subchapter. Rather, the Code Revision Commission simply recodified the enacted language. And it makes perfect sense for the additional sections added by Act 1780 and later modified by Act 2250 of 2005 to use different language than the preexisting habeas sections because the added sections only concern the specific procedures used in actual-innocence petitions.

Echols correctly points out that petitions under Act 1780 are to be filed in the court of conviction rather than, as in traditional habeas cases, where the petitioner is in custody. Br. at 29-30. Again, this makes perfect sense because a

petitioner must seek to vacate and set aside his judgment of conviction based on actual innocence. While the court located where a petitioner is in custody could order his release (as in a traditional habeas petition), it is not clear that it would have the authority to vacate and set aside a criminal judgment entered in a different judicial circuit on a non-jurisdictional ground. On the other hand, the court of conviction has the authority to effectuate all the relief contemplated by the Act.

Next, Echols claims that the fact that the Act uses "a person convicted of a crime" rather than "prisoner" to describe petitioners means that the General Assembly meant to allow individuals not in custody to file habeas corpus petitions. As explained above, Section 201 does not attempt to set out who may file a petition under Act 1780. Br. 32-33. Further, the original habeas statute uses similarly broad ("any person") language in the section that does set out who may file a traditional habeas petition, *see* Ark. Code Ann. 16-112-103(a), and yet has historically applied only to those in custody.

Finally, Echols generally references what he deems to be an "absurd" result, Br. 36, that only those in state custody may bring actual-innocence claims under Act 1780. But it is entirely reasonable that the General Assembly would be most concerned about innocent people remaining in prison and would focus its attention there. There is nothing arbitrary about a legislature seeking to avoid the disruption and use of scarce judicial resources—not to mention the resources of the State

Crime Lab— that may occur if relief under Act 1780 were made more widely available. Moreover, the General Assembly's decision makes contextual sense because other forms of post-conviction relief, such as Rule 37 and traditional habeas, are all limited to those currently in custody. Adopting Echols' approach would create an anomaly that the General Assembly could not have expected, given the placement of actual-innocence relief within the statutory scheme for writs of habeas corpus.

The circuit court's reading of Act 1780 is correct and should be affirmed.

III. Echols is ineligible to seek relief under Act 1780 because he pleaded guilty.

In enacting Act 1780 the General Assembly recognized the possibility that newly developed scientific evidence might exonerate some prisoners who did not have access to it at the time of their trial. This Court has correctly limited Act 1780 relief to prisoners whose conviction stemmed from a trial verdict rather than a guilty plea. It should reaffirm that rule here and the circuit court's denial of relief.[3]

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[3] The circuit court did not consider whether a person who pleaded guilty may later challenge his conviction under Act 1780. But this Court "may affirm for

"A petitioner seeking testing under Act 1780 must present a prima facie case that identity was an issue at trial." *Mahmoud v. State*, 2022 Ark. 164, at 2 (citing Ark. Code Ann. 16-112-202(7)); *see also Leach v. State*, 2019 Ark. 238, at 3 (2019). This Court has held that a defendant who pleaded guilty may not later file an Act 1780 petition to contest his conviction. That is because "[w]hen a defendant enters a plea of guilty, the guilty plea is the trial." *Graham v. State*, 358 Ark. 296, 298 (2004). "In entering his plea of guilty, [the defendant] admitted that he committed the offense." *Id.* Thus, "identity is not in question for purposes of the Act." *Barton v. State*, 2014 Ark. 418, at 3 n.1.

Echols was originally tried and convicted of capital murder. *Echols v. State*, 326 Ark. 917 (1996). But the circuit court granted Echols a new trial pursuant to his original Act 1780 petition (filed in 2002), which reinvested jurisdiction in the circuit court and allowed his eventual guilty plea to first-degree murder. (RP 137). "Th[at] guilty plea [was] the trial" for purposes of the Act 1780 petition at issue here. *Graham*, 358 Ark. at 298.

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any reason that has been developed in the record." *Foust v. Montez-Torres*, 2015 Ark. 66, at 5 n.2.

The fact that Echols pleaded guilty under *North Carolina v. Alford* does not change the analysis. This Court has not had the opportunity to decide "whether entering an *Alford* plea of guilty, . . . wherein a defendant maintains his innocence, affords a defendant the opportunity to later challenge the judgment on the grounds of actual innocence." *Davis v. State*, 366 Ark. 401, 402 n.2 (2006) (affirming denial of Act 1780 petition on other grounds). But *Alford* pleas are entered into by defendants "in light of strong evidence of actual guilt with the intention of limiting the penalty to be imposed." *Id.* at 402 n.1. That Echols' *Alford* plea permitted him to maintain his innocence does not mean that his identity was nevertheless "an issue at trial" for purposes of Act 1780. *Mahmoud*, 2022 Ark. 164, at 2. Rather, his guilty plea operated as a waiver of his opportunity to contest the State's case against him—a case he necessarily admitted was "strong"—including the issue of identity. *Davis*, 366 Ark. 401, 402 n.2. And it forecloses relief under Act 1780 as well.

Indeed, Act 1780's text confirms this Court's holdings that its procedures are not available to defendants who pleaded guilty in lieu of trial. Indeed, the statute applies only where "evidence not available at trial"—not plea negotiations—"establishes the petitioner's actual innocence." Ark. Code Ann. 16-112-201(a)(1). A petitioner must identify a theory of defense that is not inconsistent "with an affirmative defense presented *at the trial* of the offense being challenged." *Id.* at -

202(6)(A) (emphasis added). Act 1780's text does not mention, let alone specifically provide for, the possibility of a criminal defending asserting an actual-innocence claim against a conviction resulting from a guilty plea.

That makes sense. After all, "Act 1780 was not meant to do away with finality in judgments." *Johnson v. State*, 356 Ark. 534, 551 (2004). Echols had the opportunity to press on with his previous Act 1780 petition and seek a new trial; he chose not to. He ought not be able to come back a decade later and unduly expend judicial resources with endless requests for further DNA testing.

IV. Echols' petition is subject to dismissal because it was not properly verified.

Act 1780 requires a petitioner to "claim[] under penalty of perjury that: (1) Scientific evidence not available at trial establishes the petitioner's actual innocence; or (2)" newly discovered scientific evidence will enable the petitioner to establish "that no reasonable fact-finder would find the petitioner guilty of the underlying offense." Ark. Code Ann. 16-112-201(a).

Echols' petition does not contain any sort of verification or supporting affidavit, and that is fatal to his claim. (RP 26-51). While this Court has allowed simple notarized petitions to suffice, *see Edwards v. State*, 2014 Ark. 185, at 3 (2014), it has not dispensed with the requirement altogether. *See Wallace v. State,* 2011 Ark. 295, at 5 (2011). This Court can simply affirm the circuit court's denial of

relief on this alternative ground. *See Davis v. State*, 366 Ark. 401, 402 n.2 (2006) (affirming denial of Act 1780 petition on other grounds).[4]

CONCLUSION

For these reasons, this Court should dismiss this appeal or, alternatively, affirm the circuit court's denial of relief.

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[4] Ark. Code Ann. 16-112-203(c) separately requires that a petition be "[v]erified by the petitioner or signed by the petitioner's attorney." But this Court has never held that an attorney's signature satisfies the penalty-of-perjury requirement in Section 201(a).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Administrative Order No. 19 and that it conforms to the word-count limitations contained in Rule 4-2(d) of this Court's pilot rules on electronic filings. The jurisdictional statement, the statement of the case and the facts, and the argument sections altogether contain 4,515 words.

/s/ *Dylan L. Jacobs*
Dylan L. Jacobs

CERTIFICATE OF SERVICE

I certify that on May 15, 2023, I electronically filed this document with the Clerk of Court using the eFlex electronic-filing system, which will serve all counsel of record.

/s/ *Dylan L. Jacobs*
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