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**IN THE
COURT OF APPEALS OF INDIANA**

AARON (ISRAEL) ISBY,)
)
Appellant-Petitioner,)
)
vs.)
)
ALLEN FINNAN, Superintendent of the Wabash)
Valley Correctional Facility,)
)
Appellee-Plaintiff.)

No. 02A04-0705-CR-292

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-8808-CF-404

October 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Aaron (Israel) Isby appeals the Allen Superior Court's determination it did not have jurisdiction over his motion for writ of habeas corpus. Because exclusive jurisdiction over his motion lies in Sullivan County, we affirm.

FACTS AND PROCEDURAL HISTORY

On December 29, 1988, the Allen Superior Court sentenced Isby for aiding, inducing, or causing robbery, a Class A felony. Isby is incarcerated at the Wabash Valley Correctional Facility in Sullivan County.

On April 18, 2007, Isby filed in the Allen Superior Court a pro se petition for writ of habeas corpus.¹ The court denied it because the court was not in the county where Isby is incarcerated, and therefore the court had no jurisdiction.

DISCUSSION AND DECISION

“Writs of habeas corpus may be granted by: (1) the circuit or superior courts of the county in which the person applying for the writ may be restrained of his or her liberty, or by the judges of those courts” Ind. Code § 34-25.5-2-2(a).

While that statute reads that writs of habeas corpus *may* be granted by the Circuit or Superior Courts of the county in which the person applying therefore may be restrained of his or her liberty it has been held in effect that such actions *must* be brought in the courts named, and that such courts have exclusive jurisdiction in such proceedings.

¹ Isby also filed a motion for change of judge from Judge John Surbeck of the Allen Superior Court because Judge Surbeck had presided over the trial of Isby's co-defendant in 1988. Judge Surbeck did not rule on this motion before dismissing for lack of jurisdiction. However, we find no reversible error therein. *See Kelly v. Gerdink*, 222 Ind. 105, 106, 52 N.E.2d 43 (1944) (Because the court had no jurisdiction over defendant's petition, “it would be a useless procedure to mandate the granting of a change of judge.”).

State ex rel. Moore v. Carlin, 226 Ind. 437, 438, 81 N.E.2d 670, 671 (1948) (emphases added). See also *Partlow v. Superintendent, Miami Correctional Facility*, 756 N.E.2d 978, 981 (Ind. Ct. App. 2001) (“Jurisdiction over writs of habeas corpus is traditionally with the court in the county where the petitioner is incarcerated.”). Accordingly, Allen Superior Court was without jurisdiction to hear Isby’s habeas corpus petition.²

Affirmed.

DARDEN, J., and CRONE, J., concur.

² We note the Allen Superior Court’s order states it “denied” Isby’s motion. (App. at 18.) The Allen Superior Court did not consider the merits of Isby’s motion. Therefore, its judgment has no preclusive effect, and Isby may still file his habeas corpus motion in Sullivan County.