



In the Missouri Court of Appeals Eastern District

DIVISION FIVE

DALE ASHER,)	No. ED91854
)	
Appellant,)	
)	Appeal from the Circuit Court of
vs.)	Pike County
)	
JIM MOORE,)	Honorable Dan Dildine
)	
Respondent.)	FILED: December 9, 2008

Dale Asher appeals from a judgment denying his petition for writ of habeas corpus. The appeal is dismissed.

If this Court lacks jurisdiction to entertain an appeal, then it should be dismissed. Buff v. Roper, 155 S.W.3d 811, 812 (Mo. App. E.D. 2005). Appellant seeks to appeal from the circuit court's judgment dismissing his petition for writ of habeas corpus. An appeal does not lie from the denial or dismissal of a petition for habeas corpus. Blackmon v. Missouri Board of Probation and Parole, 97 S.W.3d 458 (Mo. banc 2003); Garner v. Roper, 224 S.W.3d 623 (Mo. App. E.D. 2007).

We issued an order directing Appellant to show cause why his appeal should not be dismissed. Appellant filed a response asking this Court to address the merits of his appeal. However, if this Court does not have jurisdiction, then it cannot address the merits of the appeal. Appellant's remedy, if any, is where a petition for writ of habeas corpus is denied is to file a new

writ petition in a higher court. Webster v. Purkett, 110 S.W.3d 832, 837 (Mo. App. E.D. 2003).

We decline to treat his appeal as an extraordinary writ petition.

The appeal is dismissed for lack of an appealable judgment.

Patricia L. Cohen, J., and
Kenneth M. Romines, J., concur.

Nannette A. Baker, Chief Judge