



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-76,228-02

GILBERTO CHAVERO, JR., Relator

v.

HIDALGO COUNTY DISTRICT CLERK, Respondent

**ON APPLICATION FOR A WRIT OF MANDAMUS
CAUSE NO. CR-0960-96-B IN THE 93RD JUDICIAL DISTRICT COURT
FROM HIDALGO COUNTY**

Per curiam.

ORDER

Relator has filed a motion for leave to file a writ of mandamus pursuant to the original jurisdiction of this Court. In it, he contends that he filed an application for a writ of habeas corpus in the 93rd Judicial District Court of Hidalgo County, that more than 35 days have elapsed, and that the application has not yet been forwarded to this Court. Relator also alleges that he filed a motion for appointment of counsel for the purpose of post-conviction DNA testing under Tex. Code Crim.

Proc. art. 64.01, but that the trial court refuses to rule on that motion.

This Court received Relator's 11.07 habeas application on August 1, 2011, and therefore Relator has not demonstrated that the Hidalgo County District Clerk had violated a ministerial duty under Tex. Code Crim. Proc. art. 11.07 §3. With respect to Relator's claim under Chapter 64, when a court of appeals and this Court have concurrent, original jurisdiction of a petition for a writ of mandamus against the judge of a district or county court, the petition should be presented first to the court of appeals unless there is a compelling reason not to do so. *Padilla v. McDaniel*, 122 S.W.3d 805, 808 (Tex. Crim. App. 2003). Leave to file is denied.

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