

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

	§	No. 08-10-00059-CR
	§	
IN RE: THE STATE OF TEXAS	§	AN ORIGINAL PROCEEDING
	§	
RELATOR.	§	IN MANDAMUS
	§	
	§	

OPINION

Relator, The State of Texas, filed a petition for writ of mandamus against the Honorable Alejandro (Alex) Gonzalez, Judge of the County Court at Law No. 4, complaining of the trial court's issuance of a writ of habeas corpus ad testificandum. We conditionally grant the mandamus.

On February 13, 2008, Jose Manuel Rodriguez-Garcia pled guilty to possession of marijuana and was sentenced to one day in county jail. Approximately one year later, while in federal custody on removal proceedings, Rodriguez-Garcia filed an application for writ of habeas corpus, attacking his state conviction on grounds of ineffective assistance of counsel. A hearing was set on the matter for February 22, 2010. Prior to that hearing, Rodriguez-Garcia filed a motion for the issuance of a writ of habeas corpus ad testificandum, which requested the state court to order his release from federal custody for the purposes of appearing at a hearing on his habeas-corporus application. The trial court issued the writ ad testificandum. Subsequently, the district attorney filed a motion to vacate the writ of habeas corpus ad testificandum in light of our previous decisions in *In re State*, No. 08-09-00181-CR, 2010 WL 335630, *3 (Tex.App.--El Paso

Jan. 29, 2010, orig. proceeding)(not designated for publication), and *In re State*, No. 08-10-00038-CR, — S.W.3d —, 2010 WL 144040, *3 (Tex.App.--El Paso Jan. 13, 2010, orig. proceeding)(not yet reported).

We recently held that while a state court may entertain a hearing on an applicant's habeas-corpus application filed under Chapter 11 of the Texas Code of Criminal Procedure, it has no authority to compel an inmate's release from federal custody for purposes of attending that hearing. *See In re State*, 2010 WL 335630 at *3; *In re State*, 2010 WL 144040 at *3. Based on our recent decisions, we conditionally grant the Relator's request for mandamus relief on the trial court's order issuing a writ of habeas corpus ad testificandum. We are confident the trial court will vacate the order in accordance with this opinion, and the writ will issue only if the trial court fails to do so.

February 19, 2010

DAVID WELLINGTON CHEW, Chief Justice

Before Chew, C.J., McClure, and Rivera, JJ.

(Do Not Publish)