

Petition for Writ of Mandamus Dismissed and Memorandum Opinion filed June 3, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00452-CR

IN RE JAMES THOMAS GREEN, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

Relator, James Thomas Green, an inmate in the Texas Department of Criminal Justice who is proceeding *pro se*, filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. In his petition, Green asks that this court compel the respondent, the Honorable Joan Campbell, presiding judge of the 248th District Court in Harris County, to enter a judgment of acquittal in trial court cause number 715266. Green asserts that the abandonment of a paragraph in the indictment resulted in an acquittal that is not reflected in the judgment. Green also asks that we order the respondent to conduct a hearing and make appropriate findings concerning his entitlement to a judgment of acquittal.

A jury convicted Green of murder, and the trial court sentenced him to confinement for thirty-five years in the Institutional Division of the Texas Department of Criminal

Justice. This court affirmed his conviction. *See Green v. State*, No. 14-96-01536-CR, 1999 WL 33620 (Tex. App.—Houston [14th Dist.] Jan. 28, 1999, pet. ref'd) (not designated for publication), *cert. denied*, 529 U.S.1059, 120 S.Ct. 1567 (2000).

Earlier this year, Green filed another petition for writ of mandamus in this court in which he sought essentially the same relief. *See In re Green*, No. 14-10-00048-CR, 2010 WL 343380 (Tex. App.—Houston [14th Dist.] Feb. 2, 2010, orig. proceeding) (not designated for publication). We dismissed the petition for want of jurisdiction. *Id.*

In a criminal case, mandamus relief is authorized only if the relator establishes that (1) under the facts and the law, the act sought to be compelled is purely ministerial; and (2) he has no other adequate legal remedy. *State ex rel. Rosenthal v. Poe*, 98 S.W.3d 194, 198 (Tex. Crim. App. 2003) (orig. proceeding). An act is ministerial if the law dictates the duty to be performed with such certainty that nothing is left to the exercise of discretion. *State ex rel. Healy v. McMeans*, 884 S.W.2d 772, 774 (Tex. Crim. App. 1994) (orig. proceeding).

Although Green has rephrased his request for relief as seeking to enforce the performance of a ministerial duty, the substance of his petition constitutes a collateral attack on his final felony conviction and is not an appropriate basis for mandamus relief. Such an attack falls within the scope of a post-conviction writ of habeas corpus under article 11.07 of the Texas Code of Criminal Procedure. *See Tex.Code Crim. Proc. Ann. art. 11.07 § 3* (Vernon Supp. 2009). Article 11.07 provides the exclusive means to challenge a final felony conviction. *Board of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995). While the courts of appeals have mandamus jurisdiction in criminal matters, only the Texas Court of Criminal Appeals has jurisdiction over matters related to final post-conviction felony proceedings. *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. 1991). This court has no authority to issue a writ of mandamus to compel a district court judge to rule

on matters seeking post-conviction relief in felony convictions in which the judgment is final. *See In re McAfee*, 53 S.W .3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding).

Accordingly, we dismiss Green’s petition for lack of jurisdiction.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Boyce.

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