

Petition for Writ of Mandamus Dismissed and Memorandum Opinion filed June 25, 2010.



In The

**Fourteenth Court of Appeals**

NO. 14-10-00561-CR

IN RE TOMMIE MELVIN BANKS, Relator

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ORIGINAL PROCEEDING  
WRIT OF MANDAMUS

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**MEMORANDUM OPINION**

Relator Tommie Melvin Banks 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 the petition, relator asked this court to compel the presiding judge of the 177th District Court of Harris County to forward his application for post-conviction writ of habeas corpus to the Court of Criminal Appeals. .

Relator entered a plea of guilty to murder, and the jury assessed punishment at confinement for sixty years in the Institutional Division of the Texas Department of Criminal Justice. This court affirmed relator's conviction. *See Banks v. State*, No. 14-97-01251-CR, 1999 WL 649091 (Tex. App.—Houston [14th Dist.] Aug. 26, 1999, pet. ref'd) (not designated for publication).

According to his petition, relator filed an application for writ of habeas corpus in the trial court on or about February 11, 2008. *See* Tex. Code Crim. Proc., art 11.07, § 3

(Vernon Supp. 2009). Attached to the petition is a copy of a March 19, 2008 order requiring trial and appellate counsel to file affidavits responding to the allegations in relator's application. According to the petition, appellate counsel complied with the order in a timely manner, but trial counsel delayed for over a year. Relator acknowledges that trial counsel's affidavit was filed on or about June 17, 2009, and that a hearing on the application was scheduled two days later. There are no copies attached to the petition of an order or findings made by the trial court on relator's application. See Tex. R. App. P. 52.7 (requiring relator to file a certified or sworn copy of every document material to his claim for relief). The petition does not state whether the trial court has ruled on relator's application.

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).

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 from final felony convictions. See *In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding). Instead, the Court of Criminal Appeals has jurisdiction to compel a trial court judge to act on a post-conviction petition for habeas corpus. See *McCree v. Hampton*, 824 S.W.2d 578, 578-79 (Tex. Crim. App. 1992).

Because relator is seeking to compel the trial court to forward his post-conviction application for writ of habeas corpus to the Court of Criminal Appeals, we conclude that we do not have jurisdiction over this proceeding.

Accordingly, we dismiss relator's petition for writ of mandamus.

PER CURIAM

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

Do Not Publish — Tex. R. App. P. 47.2(b).