

**Petition for Writ of Mandamus Denied in Part and Dismissed in Part and
Memorandum Opinion filed January 19, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-16-01012-CR

IN RE MARCUS LOPEZ ORTIZ, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
56th District Court
Galveston County, Texas
Trial Court Cause No. 00CR1009**

MEMORANDUM OPINION

On December 20, 2016, relator Marcus Lopez Ortiz filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Lonnie Cox, presiding judge of the 56th District Court of Galveston County, to rule on his writ of habeas corpus, and grant a new trial.

This court affirmed relator's convictions for aggravated robbery and aggravated assault in a memorandum opinion issued in 2002. *See Ortiz v. State*, Nos. 14-01-00556-CR & 14-01-00557-CR; 2002 WL 1041054 (Tex. App.—Houston [14th Dist.] May 23, 2002, no pet.). In his petition, relator alleges respondent has refused to rule on his writ of habeas corpus “and accepted the State's response as his ruling.” In his prayer for relief, relator asks this court to instruct the respondent to “order a new trial.”

In a criminal proceeding, mandamus relief is available only if the relator can demonstrate that: (1) the relator has no other adequate remedy at law; and (2) under the relevant law and facts, the respondent clearly abused the respondent's discretion or the act sought to be compelled is purely ministerial. *State ex rel. Rosenthal v. Poe*, 98 S.W.3d 194, 215 (Tex. Crim. App. 2003) (orig. proceeding).

To obtain mandamus relief for the trial court's refusal to rule on a motion or application for writ of habeas corpus, a relator must establish: (1) the application was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the application; and (3) the trial court refused to rule. *In re Craig*, 426 S.W.3d 106, 106–07 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding). Relator did not attach a file-stamped copy of his application for writ of habeas corpus demonstrating it is actually pending in the trial court. To the extent relator complains of the trial court's failure to rule, relator has failed to provide a record to establish the above requirements. *See Tex. R. App. P. 52.7(a)* (requiring relator to file with the petition a certified or sworn copy of every document that is material to the relator's claim for relief). Accordingly, we deny

the portion of relator's petition in which he challenges the trial court's failure to rule.

With regard to relator's request that we order the respondent to order a new trial, relator is requesting habeas corpus relief. The courts of appeals have no original habeas corpus jurisdiction in criminal matters; our jurisdiction is appellate only. Tex. Gov't Code Ann. § 22.221(d) (West 2004); *Ex Parte Denby*, 627 S.W.2d 435 (Tex. App.—Houston [1st Dist.] 1981, orig. proceeding). Original jurisdiction to grant a writ of habeas corpus in a criminal case is vested in the Texas Court of Criminal Appeals, the district courts, the county courts, or a judge in those courts. Tex. Code Crim. Proc. Ann. art. 11.05 (West 2015); *In re Ayers*, ___ S.W.3d ___; No. 14-16-00274-CR; 2016 WL 1533747 at *1 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). Therefore, this court is without jurisdiction to consider relator's petition requesting habeas corpus relief of a new trial. We dismiss relator's petition for lack of jurisdiction with regard to his request for a new trial.

We deny the portion of relator's petition that complains of the trial court's failure to rule, and dismiss the portion of the petition that requests a new trial.

PER CURIAM

Panel consists of Justices Christopher, Jamison, and Donovan.

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