

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00031-CV

IN RE JAMES ZARYCHTA, JR.

Original Proceeding

MEMORANDUM OPINION

On January 22, 2010, James Zarychta, Jr. filed a petition for writ of mandamus in which he complains that the trial court failed to order an evidentiary hearing and to allow him to inspect evidence. We deny mandamus relief.

Zarychta alleges that he is seeking evidence for a subsequent writ of habeas corpus based upon “actual innocence.” *See* TEX. CODE CRIM. PROC. ANN. art. 11.07, § 4 (Vernon Supp. 2009) (“If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that: . . . (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.”). A habeas applicant must make a prima facie showing of innocence by a preponderance of the evidence to obtain a review of

the merits of a procedurally barred claim. *Ex parte Brooks*, 219 S.W.3d 396, 401 (Tex. Crim. App. 2007).

Mandamus relief may be granted when the relator shows that the act sought to be compelled is purely ministerial and that there is no adequate remedy at law. *Winters v. Presiding Judge of Criminal Dist. Court No. Three of Tarrant County*, 118 S.W.3d 773, 775 (Tex. Crim. App. 2003). In addition, to get mandamus relief, the relator must show that he has a clear legal right to relief. *Id.* Mandamus relief in a post-conviction habeas proceeding must be obtained from the Court of Criminal Appeals. *In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.–Houston [1st Dist.] 2001, orig. proceeding) (request for response on habeas application); *see also In re Newman*, No. 14-08-00064-CV, 2008 WL 323762, *1 (Tex. App.–Houston [14th Dist.] Feb. 7, 2008, orig. proceeding) (mem. op.) (request for discovery and inspection of evidence); *In re Green*, No. 01-05-00056-CR, 2005 WL 375311, *1 (Tex. App.–Houston [1st Dist.] Feb. 17, 2005, orig. proceeding) (mem. op.) (request for access to evidence to prepare habeas petition).

Zarychta has neither shown that he has a clear and indisputable right to an evidentiary hearing at this time, nor has Zarychta shown that he is presently entitled to mandamus relief from this Court. Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Opinion Delivered February 11, 2010
Before Gaultney, Kreger, and Horton, JJ.