

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00580-CR

IN RE MALCOLM C. MOFFETT

Original Proceeding

MEMORANDUM OPINION

Malcolm C. Moffett filed a petition for writ of mandamus that asks this Court to compel the trial court to address Moffett’s “bill of review” on a final felony conviction. Mandamus relief may be granted only when the relator shows that he has a clear and indisputable right to the act sought to be compelled. *Banales v. Court of Appeals for Thirteenth Judicial Dist.*, 93 S.W.3d 33, 35 (Tex. Crim. App. 2002). Generally, the trial court has a duty to rule on a properly and timely filed motion. *See State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987). In this case, however, Moffett has not shown that there presently exists an active proceeding before the convicting court. The exclusive post-conviction remedy is through habeas corpus proceedings under Article 11.07 of the Texas Code of Criminal Procedure. *See In re Johnston*, 346 S.W.3d

710, 712 n.4 (Tex. App.—Texarkana 2011, orig. proceeding); *see also* Tex. Code Crim. Proc. Ann. art. 11.07 (West Supp. 2010). Moreover, mandamus relief relating to a post-conviction 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). We deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Opinion Delivered November 9, 2011
Do Not Publish
Before Gaultney, Kreger, and Horton, JJ.