

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-17-00091-CR

IN RE MICHAEL DAVID BELLOW JR.

Original Proceeding
356th District Court of Hardin County, Texas
Trial Cause No. 2016-13

MEMORANDUM OPINION

Pro se relator Michael David Bellow Jr. filed a petition for writ of mandamus concerning a search warrant for Bellow's cell phone. The warrant, which pertains to a criminal case that is pending against Bellow in the Criminal District Court of Jefferson County, was signed by Hardin County District Judge Steve Thomas. Bellow asks this Court to compel Judge Thomas to: (1) accept jurisdiction over the search warrant; (2) vacate the search warrant and order the return of Bellow's cell phone due to alleged lack of probable cause and alleged conflicts of interest and prosecutorial misconduct; and (3) order the return of data obtained as a result of the

search warrant and provide an accounting of the chain of custody of the phone and its data.

Section 22.221(b) of the Texas Government Code provides that Courts of Appeals have writ power as to district judges. Tex. Gov't Code Ann. § 22.221(b)(1) (West 2004). However, this Court lacks jurisdiction over district judges who are merely acting as magistrates. *State ex rel. Holmes v. Salinas*, 774 S.W.2d 421, 422 (Tex. App.—Houston [14th Dist.] 1989) (orig. proceeding) (holding that although the respondent judge was “clearly a district judge by title and office[,]” he was acting as a magistrate). The criminal case against Bellow is pending before Judge John Stevens of the Jefferson County Criminal District Court.

We conclude that District Judge Thomas was acting as a magistrate when he signed the search warrant for Bellow's cell phone. *See id.*; *see also* Tex. Code Crim. Proc. Ann. arts. 2.09 (providing that District Judges are magistrates), 18.01(a) (stating that a search warrant is a written order issued by a magistrate) (West Supp. 2016). We therefore also conclude that this Court lacks jurisdiction to issue a writ of mandamus against Judge Thomas. *See Salinas*, 774 S.W.2d at 422–23; *see also* Tex. Code Crim. Proc. Ann. arts. 2.09, 18.01(a). Accordingly, we deny Bellow's petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Submitted on April 18, 2017
Opinion Delivered April 19, 2017
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.