



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-16-00432-CV

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IN RE DANGO SHAWN MCCLAIN, RELATOR

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**OPINION ON ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS**

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December 2, 2016

**MEMORANDUM OPINION**

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Pending before the court is a document filed by relator Dango Shawn McClain, *pro se*, entitled “Writ of Mandamus” wherein he requests that the “Honorable 47<sup>th</sup> District Court in care of Judge Dan Schaap” direct James Farren, the Randall County District Attorney to expunge his record of his wrongful conviction for unlawful possession of a firearm by a felon in trial court cause number 16013-A.<sup>1</sup> In his

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<sup>1</sup> Relator filed this pleading with this court after receiving the following missive from the Randall County District Clerk, Jo Carter: “In reference to the above styled name, the Randall County District Clerk’s Office has received [Relator’s] Plaintiff’s Original Petition for Writ of Mandamus. When filing a Writ of Mandamus addressed either to a Judge or District Court it should be filed with the 7<sup>th</sup> Court of Appeals.” She cited no legal authority supporting her proposition. Nor do we know of any authority permitting her to determine that a petition asking a district judge to issue a writ of mandamus must be first filed with an appellate court. In short, Judge Schaap should have been afforded the opportunity to first address the propriety of the filing.

pleading, Relator states that he was wrongfully convicted of the possessed firearm due to the fact the firearm was actually a “B.B. gun.” We dismiss the cause.

In effect, Relator is contending that he was wrongfully convicted and is requesting that it be expunged from his record. One seeking to set aside a final conviction does so via a habeas corpus petition filed in state court. We, therefore, construe Relator’s pleading as a petition for a writ of habeas corpus which is governed by article 11.07 of the Texas Code of Criminal Procedure. However, we have no jurisdiction over article 11.07 proceedings. TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2015); see *Runnels v. State*, 804 S.W.2d 278 (Tex. App.—Beaumont 1991, no pet.); see also *Watson v. State*, 96 S.W.3d 497, 500 (Tex. App.—Amarillo 2002, pet. ref’d) (holding that courts of appeal lack the authority to issue original writs of habeas corpus in other than certain civil matters); TEX. GOV’T CODE ANN. § 22.221 (West 2004) (providing the authority to issue certain writs). Such a proceeding must be initiated in the Texas Court of Criminal Appeals. Furthermore, the application for writ of habeas corpus “*must be filed with the clerk of the court in which the conviction being challenged was obtained.*” TEX. CODE CRIM. PROC. art. 11.07 § 3(b) (emphasis added).

Accordingly, the petition is dismissed for want of jurisdiction.

Per Curiam