



**IN THE
TENTH COURT OF APPEALS**

No. 10-11-00344-CR

IN RE DAVID JAMES

Original Proceeding

MEMORANDUM OPINION

David James filed a petition for writ of mandamus requesting this Court to order the trial court to appoint counsel to represent him in his appeal of the trial court's dismissal of his petition for forensic DNA testing.

Article 64.01 (c) of the Texas Code of Criminal Procedure provides that:

A convicted person is entitled to counsel during a proceeding under this chapter. The convicting court shall appoint counsel for the convicted person if the person informs the court that the person wishes to submit a motion under this chapter, the court finds reasonable grounds for the motion to be filed, and the court determines that the person is indigent.

TEX. CODE CRIM. PRO. ANN. art. 64.01 (c) (West Pamph. 2010). In the order dismissing James's petition for forensic DNA testing, the trial court found that there is no

reasonable grounds for a motion to be filed under Chapter 64 of the Texas Code of Criminal Procedure.

The proper procedure for a convicted person to challenge the trial court's refusal to appoint counsel under Article 64.01 (c) is by appeal after the motion for DNA testing is denied. *Gutierrez v. State*, 307 S.W.3d 318, 323 (Tex. Crim. App. 2010). James has appealed the trial court's denial of his petition for DNA testing in Cause No. 10-11-00215-CR. That cause is pending before this court.

Relator's petition for writ of mandamus is denied.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Petition denied
Opinion delivered and filed October 12, 2011
[OT06]