



**IN THE
TENTH COURT OF APPEALS**

No. 10-16-00245-CR

EX PARTE JOE PENA, SR.

**From the 20th District Court
Milam County, Texas
Trial Court No. 19,269**

MEMORANDUM OPINION

In a document filed with this Court on July 29, 2016, Joe Pena, Sr. complains about the validity of his conviction in 1998 for the felony offense of aggravated sexual assault of a child. *See* TEX. PENAL CODE ANN. § 22.021 (West 2011). Although Pena styles the document as a Writ of Mandamus, it is actually an original petition for writ of habeas corpus. *See* TEX. CODE CRIM. PROC. ANN. art. 11.01 (West 2015) (“The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty.”); *see also id.* art. 11.07. It is not properly served. *See* TEX. R. APP. P. 9.5. The Clerk of this Court is not a party to this proceeding. *See id.* 52.2. Nevertheless, we use Rule 2 to set aside this requirement and proceed to a timely disposition. *See id.* 2.

As an intermediate court of appeals, we have no jurisdiction over post-conviction writs of habeas corpus in felony cases. *See* TEX. CODE CRIM. PROC. ANN. art. 11.05 (West 2015); *Ex parte Martinez*, 175 S.W.3d 510, 512-13 (Tex. App.—Texarkana 2005, orig. proceeding); *Self v. State*, 122 S.W.3d 294, 294-95 (Tex. App.—Eastland 2003, no pet.); *see also Ex parte Hearon*, 3 S.W.3d 650, 650 (Tex. App.—Waco 1999, orig. proceeding).

Accordingly, because we have no jurisdiction, we dismiss Pena’s petition.

Pena’s motion for leave to file his petition, which was also not served, is dismissed as moot.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Pet dismissed
Motion dismissed
Opinion delivered and filed August 10, 2016
[OT06]

