

NO. 12-10-00132-CR
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IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE: KENNETH LEON SNOW,
RELATOR

§

§ ***ORIGINAL PROCEEDING***

§

MEMORANDUM OPINION

Kenneth Leon Snow seeks a writ of mandamus compelling the trial court to withdraw his guilty plea in two cases, vacate his sentences, and return him to the position he occupied prior to entering his guilty pleas. We deny the petition.

In 1998, Snow was convicted of robbery (trial court cause number 241-90487-97) and aggravated robbery (trial court cause number 241-80726-97) after pleading guilty to both offenses. He was granted deferred adjudication probation in both cases pursuant to a plea bargain. His deferred adjudication probation was subsequently revoked, and he is presently serving a term of imprisonment that was assessed upon revocation. Snow asserts that, because he was convicted of aggravated robbery, he was ineligible for deferred adjudication probation. He reasons that because of this ineligibility, the trial court's grant of deferred adjudication probation was void, as was the court's subsequent revocation and assessment of a term of imprisonment. Therefore, he concludes, his guilty pleas were involuntary and he is entitled to withdraw them and be returned to the position he occupied before entering the pleas.

In a criminal case, mandamus is appropriate when (1) the relator has no adequate remedy at law and (2) the act sought to be compelled is ministerial rather than discretionary. *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991). A defendant may obtain relief from an illegal sentence on direct appeal or by a writ of habeas corpus. *Mizell v. State*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003).

Although Snow's time for filing a notice of appeal has expired, *see* TEX. R. APP. P. 26.2, he may seek relief by filing a postconviction writ of habeas corpus. *See* TEX. CODE CRIM. PROC. ANN. § 11.07 (Vernon 2005). Therefore, Snow has an adequate remedy at law. Accordingly, we *deny* the petition for writ of mandamus.

SAM GRIFFITH

Justice

Opinion delivered June 30, 2010.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)