NO. 12-10-00225-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:	***§***	
JAMES EARL BUTLER,	***§***	***ORIGINAL PROCEEDING***
RELATOR	***§***	

MEMORANDUM OPINION
PER CURIAM

Relator James Earl Butler seeks a writ of mandamus directing the trial court to vacate its order denying Relator's third motion for a court of inquiry. We deny the petition.

Relator entered an open plea of guilty to aggravated assault with a deadly weapon. He was found guilty and sentenced to ten years of imprisonment and a $5,000 fine.[1] After sentencing, the case was transferred from the convicting court to the 7th Judicial District Court of Smith County but was not assigned a new cause number. Relator later filed a motion in the convicting court requesting a court of inquiry. The motion was denied. Approximately six months later, Relator filed a motion in the 7th Judicial District Court (the transferee court) requesting a court of inquiry, which was denied by written order. Immediately thereafter, Relator filed a third motion for a court of inquiry, but directed his motion to the 241st Judicial District Court of Smith County. The presiding judge of the 7th Judicial District Court, who is named as the respondent in this proceeding, denied the motion.

Relator urges that because his motion was directed to the 241st Judicial District Court, the respondent could not rule on it and, consequently, the order denying the motion is void. This contention is without merit, however, because the record shows that the case was transferred to the court in which the respondent is the presiding judge. But even without the transfer, there is

[1] Our statement of the facts is based, in part, upon recitations contained in various trial court orders included in the record that Relator furnished in this proceeding.

nothing improper, under the facts before us, about the respondent trial judge ruling on a motion directed to another district court. This is because the Texas Constitution and the Texas Government Code give district courts broad discretion to exchange benches and enter orders on other cases in the same county, even without a formal order memorializing the exchange or transfer. *See* TEX. CONST. art. V, § 11 ("[T]he District Judges may exchange districts or hold courts for each other when they may deem it expedient. . . ."); TEX. GOV'T CODE ANN. § 74.094(a) (Vernon 2005) (stating that district court judges may "hear and determine a matter pending in any district or statutory county court in the county regardless of whether the matter is preliminary or final or whether there is a judgment in the matter. The judge may sign a judgment or order in any of the courts regardless of whether the case is transferred. The judgment, order, or action is valid and binding as if the case were pending in the court of the judge who acts in the matter.").

This court has authority to issue a writ of mandamus in a criminal case if two conditions are met: (1) there is no adequate remedy at law and (2) the act sought to be compelled is ministerial. *See* ***Ater v. Eighth Court of Appeals***, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991). Relator has not shown that the respondent signed a void order. Therefore, he cannot establish that vacating the order is a ministerial act. Without this showing, he is not entitled to mandamus relief, and his petition for writ of mandamus is ***denied***.

Opinion delivered July 30, 2010.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)