

NO. 12-13-00292-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

<i>IN RE:</i>	§	
<i>JODY FORD MCCREARY,</i>	§	<i>ORIGINAL PROCEEDING</i>
<i>RELATOR</i>	§	

MEMORANDUM OPINION
PER CURIAM

Pursuant to a plea bargain, Relator Jody Ford McCreary pleaded guilty to tampering with physical evidence, a third degree felony with one enhancement, and was sentenced to imprisonment for twelve years. Relator contends in this proceeding that the trial court did not follow the plea bargain in assessing his punishment, but also did not allow him to withdraw the “plea bargain” and proceed to trial. He requests a writ of mandamus directing the trial court to withdraw the “plea bargain” and proceed to a jury trial on the original charge.

Relator attempted to appeal his conviction to this court, but his notice of appeal was untimely. Accordingly, we dismissed the appeal for want of jurisdiction more than two years ago, and Relator did not file a petition for discretionary review. *See McCreary v. State*, No. 12-11-00311-CR, 2011 WL 4971606, at *1 (Tex. App.–Tyler Oct. 19, 2011, no pet.) (mem. op., not designated for publication). Thus, the conviction is final.

A writ of habeas corpus is the exclusive means to challenge a final felony conviction. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 3 (West Supp. 2013); *Bd. of Pardons & Paroles ex rel. Keene v. Eighth Dist. Court of Appeals*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995). Only the court of criminal appeals has jurisdiction to grant postconviction habeas relief from a final conviction. *See Keene*, 910 S.W.2d at 483. Accordingly, we *dismiss* Relator’s mandamus petition for want of jurisdiction.

Opinion delivered December 12, 2013.

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

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

DECEMBER 12, 2013

NO. 12-13-00292-CR

JODY FORD MCCREARY,

Relator

V.

HON. KERRY L. RUSSELL,

Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by **JODY FORD MCCREARY**, who is the relator in Cause No.007-1110-10, pending on the docket of the 7th Judicial District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on September 18, 2013, and the same having been duly considered, because it is the opinion of this Court that it does not have jurisdiction of the petition, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **DISMISSED FOR WANT OF JURISDICTION**.

By per curiam opinion.

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