



**IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS**

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**NO. WR-81,953-05**

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**In re THE STATE OF TEXAS ex rel MICHAEL MUNK, Relator**

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**ON APPLICATION FOR A WRIT OF MANDAMUS  
CAUSE NO. WR-81,953-05  
IN THE 106<sup>TH</sup> DISTRICT COURT FROM LYNN COUNTY**

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**KELLER, P.J., filed a concurring opinion.**

Mandamus relief is available only when the relator can establish two things: first, that no other adequate remedy at law is available; and second, that the act he seeks to compel is ministerial.<sup>1</sup> The State cannot appeal a pretrial order for consolidation,<sup>2</sup> so the State has established the first prong of the test. However, the State did not bring this petition regarding a pretrial ruling until over a month after the trial concluded and the defendant was convicted on every allegation. Jeopardy has now attached and the defendant has been convicted. Any procedural error regarding consolidation has been rendered moot by the completion of the trial.

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<sup>1</sup> *Braxton v. Dunn*, 803 S.W.2d 318, 320 (Tex. Crim. App. 1991).

<sup>2</sup> TEX. CRIM. PROC. art. 44.01.

For these reasons, I agree with the Court that leave to file should be denied.

Filed: November 19, 2014

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