



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-24,927-68

TODD WARREN ALTSCHUL, Relator

v.

JUDGE OF THE 23RD DISTRICT COURT, Respondent

**ON APPLICATION FOR A WRIT OF MANDAMUS
CAUSE NO. 23557
FROM BRAZORIA COUNTY**

Per curiam.

ORDER

Relator filed a motion for leave to file an application for a writ of mandamus pursuant to the original jurisdiction of this Court. In it, he contended he had filed an application for a writ of habeas corpus in the 23rd District Court of Brazoria County, but the habeas application had not been timely forwarded to this Court. The mandamus application was abated for a response from the District Clerk of Brazoria County, which has been provided. The response indicates in pertinent part, “[O]ur records do not reflect any 11.07 Writ of Habeas Corpus filed by [Relator] from April 1, 2012 up to date.”

Relator replies that he did file the habeas application. He attempts to prove filing with a copy of a habeas application displaying a file stamp from Brazoria County with a date of April 19, 2012, and he alleges the file stamp was placed there by the clerk. The file stamp has no time or signature and is different from other Brazoria County file stamps in the record. Relator also provides a United States Postal Service Form 3811 (green card) No. 7010-2780-0002-0193-6770 regarding a delivery to the clerk made on April 18, 2012, which bears the signature of Krista Thompson. Certified copies of these documents are attached to this Order.

In these circumstances additional facts are needed, and the trial court is the appropriate forum for findings of fact. *See Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960). The Judge of the 23rd District Court of Brazoria County shall make factual findings regarding the authenticity of the file stamp on the habeas application and the green card. The trial court shall also make factual findings regarding whether Relator's writ application was received for filing by the Brazoria County District Clerk on or about April 18, 2012, and whether it was filed. The trial court may make any additional factual findings it deems relevant and appropriate.

This application for a writ of mandamus will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: October 3, 2012
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