



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE: GERARDO OGAZ,	§	No. 08-21-00154-CR
	§	AN ORIGINAL PROCEEDING
Relator.	§	IN MANDAMUS
	§	
	§	
	§	

MEMORANDUM OPINION

Relator Gerardo Ogaz, *pro se*, filed a pleading requesting that we compel the El Paso County Public Defender’s Office to provide him with a copy of his client-attorney file for his 2003 conviction for aggravated robbery in *The State of Texas v. Gerardo Ogaz*, cause number 20000D04394, 409th District Court of El Paso County, Texas. We construe this pleading as a petition for writ of mandamus. *See generally* TEX. R. APP. P. 52.3; *In re Castle Tex. Prod. Ltd. P’ship*, 189 S.W.3d 400, 403 (Tex. App.—Tyler 2006, orig. proceeding) (“The function of the writ of mandamus is to compel action by those who by virtue of their official or quasi-official positions are charged with a positive duty to act.”) (citing *Boston v. Garrison*, 152 Tex. 253, 256 S.W.2d 67, 70 (1953)).

To be entitled to mandamus relief, the relator must establish both that he has no adequate remedy at law to redress his alleged harm, and that what he seeks to compel is a purely ministerial act not involving a discretionary or judicial decision. *In re Harris*, 491 S.W.3d 332, 334 (Tex. Crim. App. 2016, order) (orig. proceeding); *In re McCann*, 422 S.W.3d 701, 704 (Tex. Crim. App. 2013) (orig. proceeding). If the relator fails to meet both requirements, then the petition for writ of mandamus should be denied. *State ex rel. Young v. Sixth Jud. Dist. Ct. of Apps. at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding).

Article V, Section 6 of the Texas Constitution expressly grants the courts of appeals appellate jurisdiction and further states such courts “shall have such other jurisdiction, original and appellate, as may be prescribed by law.” TEX. CONST. art. V, § 6(a). This Court’s original jurisdiction is governed by section 22.221 of the Texas Government Code. *See* TEX. GOV’T CODE ANN. § 22.221; *see also In re Cook*, 394 S.W.3d 668, 671 (Tex. App.—Tyler 2012, orig. proceeding). This section provides that we may issue writs of mandamus and “all other writs necessary to enforce the jurisdiction of the court.” TEX. GOV’T CODE ANN. § 22.221(a). Specifically, we may issue writs of mandamus against:

- (1) a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district;
- (2) a judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district; or
- (3) an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code, in the court of appeals district for the judge who appointed the associate judge.

TEX. GOV’T CODE ANN. § 22.221(b).

Relator’s petition seeks mandamus relief against the El Paso County Public Defender’s Office. However, we do not possess original jurisdiction against a public defender or a public

defender's office. *See generally id.* § 22.221(b); *see also In re Noble*, No. 08-13-00174-CV, 2013 WL 3943071, at *1 (Tex. App.—El Paso July 24, 2013, orig. proceeding) (mem. op.) (concluding that the court lacked mandamus jurisdiction over the public defender); *In re Morrison*, No. 05-10-00319-CV, 2010 WL 1445170, at *1 (Tex. App.—Dallas Apr. 13, 2010, orig. proceeding) (mem. op.) (same). Further, Relator has not shown that the requested relief is necessary to enforce the jurisdiction of this Court. *See generally* TEX. GOV'T CODE ANN. § 22.221(a); *In re Richardson*, 327 S.W.3d 848, 850-51 (Tex. App.—Fort Worth 2010, orig. proceeding); *In re Phillips*, 296 S.W.3d 682, 685 (Tex. App.—El Paso 2009, orig. proceeding); *In re Washington*, 7 S.W.3d 181, 182 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding) (mem. op.).

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that Relator has not established this Court's jurisdiction over the relief sought. Accordingly, we dismiss the petition for writ of mandamus for want of jurisdiction.

GINA M. PALAFOX, Justice

October 26, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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