



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE	§	No. 08-22-00034-CR
ANDREW DENNIS MCGREW,	§	AN ORIGINAL PROCEEDING
Relator.	§	IN MANDAMUS

MEMORANDUM OPINION

On January 31, 2022, Relator filed a pro se application for writ of habeas corpus with this Court asserting that the trial court has not ruled on his motion to dismiss. Relator’s petition for writ of habeas corpus appears related exclusively to his criminal prosecution. As an intermediate court of appeals, we do not have original jurisdiction over petitions for habeas corpus relief in connection with criminal proceedings. See TEX.GOV’T CODE ANN. § 22.221(d) (habeas corpus jurisdiction of intermediate courts of appeals limited to civil matters); *Ex parte Hawkins*, 885 S.W.2d 586, 587-88 (Tex.App.--El Paso 1994, orig. proceeding) (per curiam). That jurisdiction rests instead with the Court of Criminal Appeals, the district courts, and the county courts. TEX.CODE CRIM.PROC.ANN. art. 11.05; *Ex parte Hawkins*, 885 S.W.2d at 587-88. Accordingly, Relator’s petition for writ of habeas corpus is dismissed for want of jurisdiction. See *In re Peters*, No. 08-15-00203-CR, 2015 WL 4300103, at *1 (Tex.App.--El Paso July 15, 2015, no pet.) (mem. op., not designated for publication).

And even if we treat Relator's application as a petition for writ of mandamus, we would also be compelled to deny mandamus relief. To obtain mandamus relief, 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 ministerial act not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial District Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex.Crim.App. 2007). To be entitled to a writ of mandamus compelling a trial court to consider and rule on a properly filed and pending motion, Relator must establish that: (1) he asked the trial court to rule; and (2) the trial court has either refused to rule, or failed to rule within a reasonable time. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex.App.--Houston [1st Dist.] 1992, orig. proceeding) (per curiam). It is Relator's burden to provide this Court with a sufficient record to establish his right to mandamus relief. See TEX.R.APP.P. 52.3(k)(1)(A) (appendix to mandamus must contain a copy of any order complained of, or any other document showing the mater complained of); *Id.* 52.7(a)(1) (relator must file with the mandamus petition a copy of every document that is material to his claim for relief). Relator has not provided the Court with a file-marked copy of his motion and he has not shown that he asked the trial court to rule on his motion. Further, there is no evidence in the mandamus record that the court has refused to rule or has failed to rule within a reasonable time. So even if considered as a petition for writ of mandamus, the appeal is denied.

JEFF ALLEY, Justice

February 11, 2022

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

(Do Not Publish)