



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE:	§	No. 08-22-00048-CR
JOHN BRECKLES,	§	AN ORIGINAL PROCEEDING
Relator.	§	IN MANDAMUS
	§	

MEMORANDUM OPINION

Relator John Breckles, *pro se*, has filed a document requesting that we compel Sherry Dushane, the Andrews County District Clerk, to provide him with a cause number. We construe this filing as a petition for writ of mandamus. *See* TEX. R. APP. P. 52.3.

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) (orig. proceeding) (per curiam); *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 Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding).

On March 7, 2022, the Court received Relator's request to compel the Andrews County

District Clerk to provide him with the original cause number of his otherwise unidentified case. Relator contends the district clerk has refused to provide such information. In support of his request for performance, he includes correspondence he received not only from the Andrews County District Clerk, but also from the Clerk of the Court of Criminal Appeals.

Our jurisdiction is determined by statute. Unless a party has brought their request to us in a procedural vehicle of which we have jurisdiction, we have no option other than to dismiss the request for relief, regardless of what relief is requested. *See* TEX. GOV'T CODE ANN. § 22.221(a) (“Each court of appeals or a justice of a court of appeals may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court.”). Our jurisdiction is not based on whether the appeal is precluded by law, but whether it is authorized by law. *Abbott v. State*, 271 S.W.3d 694, 696-97 (Tex. Crim. App. 2008). Here, we do not possess original jurisdiction against a district clerk. *See generally* TEX. GOV'T CODE ANN. § 22.221(b) (establishing original jurisdiction by a court of appeals over judges as expressly listed). Nevertheless, a court of appeals has authority to issue a writ of mandamus if it is necessary to enforce its jurisdiction. *Id.* § 22.221(a). Accordingly, we may issue a writ of mandamus to a district clerk *only if* he or she interferes with this Court’s jurisdiction. *See id.* § 22.221(a); *In re Simmonds*, 271 S.W.3d 874, 879 (Tex. App.—Waco 2008, orig. proceeding); *In re Smith*, 263 S.W.3d 93, 95-96 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding).

On February 2, 2022, the Andrews County District Clerk reiterated to Relator, as she had stated in her previous correspondence to him, that she had not received a notice of appeal that he said he had mailed to that office. She further informed him that she could not file his motion for leave to file as it did not meet requirements. Her correspondence provides: “It does not conform

to your case number, nor does it correspond to a cause number for a felony criminal case in your record.” (RelPet,3) Based on this record, we cannot say the district clerk has interfered with this Court’s appellate jurisdiction. See *In re Simmonds*, 271 S.W.3d at 879; *In re Smith*, 263 S.W.3d at 95-96.

We further note that when a district clerk refuses to accept a pleading presented for filing, the party presenting the document may seek relief by filing an application for writ of mandamus in the district court. TEX. GOV’T CODE ANN. § 24.011. “When a district clerk refuses to accept a pleading for filing, the party should attempt to file the pleading directly with the district judge, explaining in a verified motion that the clerk refused to accept the pleading for filing.” *In re Bernard*, 993 S.W.2d 453, 455 (Tex. App.—Houston [1st Dist.] 1999, no pet.) (per curiam) (O’Connor, J., concurring).

Accordingly, we dismiss the petition for writ of mandamus for want of jurisdiction.¹ See TEX. R. APP. P. 52.8.

GINA M. PALAFOX, Justice

March 17, 2022

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

(Do Not Publish)

¹ To the extent Relator’s request to this Court also references that he mailed a motion for leave to file and an Article 11.07 application with this Court, we note that no such filing has been received to date.