



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE:	§	No. 08-22-00054-CR
HOMER MARSHALL,	§	AN ORIGINAL PROCEEDING
Relator.	§	IN MANDAMUS
	§	

OPINION

Relator Homer Marshall, appearing pro se, petitions the Court for a writ of mandamus to compel the Honorable Alyssa Perez of the 210th Judicial District Court of El Paso, Texas, to issue a writ of habeas corpus. We deny the petition for writ of mandamus.

This is Marshall's second petition requesting that the Court issue a writ of mandamus to compel a trial court to issue a writ of habeas corpus. We dismissed his first petition for lack of jurisdiction. *In re Marshall*, No. 08-21-00224-CR, 2022 WL 336777, at *1 (Tex. App.—El Paso Feb. 4, 2022, orig. proceeding) (mem. op., not designated for publication). We noted that “criminal defendants are not entitled to hybrid representation and a trial court judge is ‘free to disregard any pro se motions presented by a defendant who is represented by counsel.’” *Id.* (quoting *Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007)).

In his current petition for a writ of mandamus, Marshall asserts that he served a pro se petition for a writ of habeas corpus on Sheriff Richard Wiles, on February 22, 2022, with a copy sent to Judge Alyssa Perez of the 210th Judicial District Court of El Paso County, Texas, wherein

he alleged in his petition that he is “currently unlawfully detained in [the El Paso County Jail Annex] . . . pursuant to an unconstitutional order of commitment entered on or about March 11, 2021 by the 384th District Court of El Paso County, Texas.” Notably, however, our mandamus record fails to show that such petition for writ of habeas corpus was docketed in the 210th Judicial District Court. Moreover, Marshall claims that he requested that Sherriff Richard Wiles serve his petition on the district court, but nothing in the record establishes that it was ever served. Based on these limitations in the mandamus record, we cannot say that the trial court has improperly failed to rule on the petition. *See In re Shugart*, 528 S.W.3d 794, 795-96 (Tex. App.—Texarkana 2017, orig. proceeding) (“Before mandamus may issue, the relator must show that the trial court had a legal duty to perform a ministerial act, was asked to do so, and failed or refused to act.”). This procedural deficiency alone requires us to deny Marshall’s petition. *In re Hernandez*, No. 07-09-0207-CV, 2009 WL 2151123, at *1 n.1 (Tex. App.—Amarillo July 20, 2009, orig. proceeding) (not designated for publication) (“Moreover, the copy of application for writ of habeas corpus relator has provided us bears no file-mark or other indication the application was filed. These procedural defects alone would require us to deny relator’s petition.”)

But even when we assume Marshall’s petition for a writ of habeas corpus was properly filed in the 210th Judicial District Court, mandamus would still not be appropriate. Mandamus is an extraordinary remedy to be used sparingly. *Guerra v. Garza*, 987 S.W.2d 593, 594 (Tex. Crim. App. 1999). A court with mandamus authority “will grant mandamus relief if relator can demonstrate that the act sought to be compelled is purely ‘ministerial’ *and that relator has no other adequate legal remedy.*” *State ex rel. Rosenthal v. Poe*, 98 S.W.3d 194, 198 (Tex. Crim. App. 2003) (orig. proceeding) (emphasis added). “The relator’s remedy at law, however, must be ‘adequate’ if it is to bar relief by mandamus.” *In re Piper*, 105 S.W.3d 107, 109 (Tex. App.—

Waco 2003, orig. proceeding). Texas courts of appeal have found that relators in Marshall's position have an adequate legal remedy as they can file a habeas corpus petition with another court having habeas jurisdiction. *Id.* at 110 (“[Relator’s] remedy is to file a petition for writ of habeas corpus in the Texas Court of Criminal Appeals, in any Texas district court other than [the one that refused to issue the writ], or in any Texas county court.”); *see also In re Wiley*, No. 12-07-00167-CR, 2007 WL 2178558, at *1 (Tex. App.—Tyler July 31, 2007, orig. proceeding) (mem. op., not designated for publication) (“The remedy for a court’s failure to consider an application for a writ of habeas corpus is simply to file the writ with another court.”); *In re Davis*, Nos. 12-08-00274-CR, 12-08-00275-CR, 2008 WL 2814836, at *1 (Tex. App.—Tyler July 23, 2008, orig. proceeding) (mem. op., not designated for publication) (“To the contrary, the remedy is simply to file the writ with another court.”); *In re Hernandez*, 2009 WL 2151123, at *2 (“In circumstances similar to those relator alleges, Texas courts have found the relator to have an adequate legal remedy by filing the application for writ of habeas corpus in another court having habeas jurisdiction.”). We agree with these courts. Marshall’s remedy for a district court’s failure to consider a properly filed petition for a writ of habeas corpus is not mandamus relief; it is to file another petition for a writ of habeas corpus with either the Texas Court of Criminal Appeals or with any other county or district court in Texas. *See* TEX. CODE CRIM. PROC. ANN. art. 11.05.

Accordingly, we deny Marshall’s pro se petition for a writ of mandamus.

GINA M. PALAFOX, Justice

June 30, 2022

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

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