

Dismissed and Opinion Filed May 18, 2016



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-16-00418-CV

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**IN RE MICHAEL D. WILLIAMS, Relator**

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**Original Proceeding from the County Criminal Court of Appeals No. 2**  
**Dallas County, Texas**  
**Trial Court Cause No. MB92-39325-M**

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MEMORANDUM OPINION

Before Chief Justice Wright and Justices Lang and Brown  
Opinion by Chief Justice Wright

Upon our own motion, we withdraw our opinion of April 19, 2016 and vacate our order of the same date. This is now the opinion of the Court.

In this original proceeding, relator requests that this Court “compel vacation” of his May 8, 1992 misdemeanor conviction for driving while intoxicated, second offense, which he contends is void because jurisdiction was never “lawfully invoked” in the trial court. Relator contends that, relying on the 1992 conviction, the State charged him with an enhanced offense under article 49.09(b) of the Texas Code of Criminal Procedure.

Although cloaked in the language of mandamus, relator’s complaint in substance seeks habeas corpus relief, which we lack jurisdiction to grant. *See Ex parte Caldwell*, 58 S.W.3d 127, 130 (Tex. Crim. App. 2000) (substance of the motion that governs, not the title). The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. *See* TEX. CODE CRIM. PROC. ANN. art. 11.01 (West 2015). A person is restrained in his liberty by a

misdemeanor conviction if the misdemeanor judgment is void and its existence may have detrimental collateral consequences in some future proceeding. *See Tatum v. State*, 846 S.W.2d 324, 327 (Tex. Crim. App. 1993). A challenge to the validity of a misdemeanor conviction may be raised by writ of habeas corpus in the district court or the county court. *Ex parte Crosley*, 548 S.W.2d 409 (Tex. Crim. App. 1977); TEX. CONST. art. V, § 8; TEX. CODE CRIM. PROC. ANN. art. 11.09 (West 2015). This Court, however, has only appellate, and not original jurisdiction over such proceedings. *Ex parte Jordan*, 659 S.W.2d 827, 828 (Tex. Crim. App. 1983) (courts of appeals have appellate jurisdiction over habeas corpus proceedings under article 11.09 of the Texas Code of Criminal Procedure); TEX. CODE CRIM. PROC. ANN. art. 11.05 (West 2015) (court of criminal appeals, district courts, and county courts have power to issue and grant writ of habeas corpus); TEX. GOV'T CODE ANN. § 22.221 (West 2004) (limiting power of courts of appeals to grant writs of habeas corpus to cases involving violations of orders in civil cases). For that reason, we dismiss the petition for want of jurisdiction.

/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF JUSTICE

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