

Dismissed w.o.j. and Opinion Filed April 9, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00340-CV
No. 05-18-00341-CV

IN RE TISMON E. COLBERT, Relator

Original Proceeding from the 194th Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F91-40938-LM and F91-40939-LM

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Stoddart

On February 28, 1992, relator pleaded guilty, without a plea agreement, to aggravated sexual assault with a deadly weapon and aggravated robbery with a deadly weapon, and the trial court imposed consecutive life terms of imprisonment. *See Colbert v. Thaler*, No. 3:11-CV-1881-O BK, 2011 WL 6156694, at *1 (N.D. Tex. Sept. 26, 2011) (citing *State v. Colbert*, No. F91-40938 and F91-40939 (194th Jud. Dist. Court, Dallas County, 1992)). Relator did not appeal. *See id.* He did, however, file post-conviction petitions for writ of habeas corpus in the trial court and the Texas Court of Criminal Appeals that were denied. *See id.* In this original proceeding, relator complains that the consecutive life sentences constitute improper cumulation orders. Relator seeks a writ of mandamus directing the trial court to reform the judgment by removing the language that the sentence in cause number F91-40938-LM does not begin until the expiration of the sentence in cause number F91-40939-CM.

This proceeding is a collateral attack on a final conviction and, therefore, falls within the scope of a post-conviction writ of habeas corpus under article 11.07 of the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2015); see *In re Taylor*, No. 12-12-00240-CR, 2012 WL 3201959, at *1 (Tex. App.—Tyler Aug. 8, 2012, orig. proceeding) (mem. op.) (dismissing original proceeding for want of jurisdiction where relator sought order directing the trial court to vacate cumulation order and reform the judgment to reflect that sentences are to run concurrently). Only the Texas Court of Criminal Appeals has jurisdiction in final, post-conviction felony proceedings. *Id*; *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding); *In re McAfee*, 53 S.W.3d 715, 717 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding). As such, we may not grant a writ of mandamus, a writ of injunction, or any other writ that would result in vacating a judgment of conviction. See *Ex parte Kennedy*, No. 12-17-00279-CR, 2017 WL 4321333, at *1 (Tex. App.—Tyler Sept. 29, 2017, orig. proceeding) (mem. op.) (citing *Ater*, 802 S.W.2d at 243). Accordingly, we dismiss this proceeding for want of jurisdiction.

/Craig Stoddart/

CRAIG STODDART
JUSTICE

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