

DISMISSED and Opinion Filed August 17, 2020



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

No. 05-20-00705-CV

No. 05-20-00711-CV

IN RE JUAN FRANCISCO TURCIOS, Relator

**Original Proceeding from the 203rd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F11-70896-P, F11-70886-P**

MEMORANDUM OPINION

Before Justices Myers, Molberg, and Evans
Opinion by Justice Molberg

In these original proceedings, relator Juan Francisco Turcios has filed a petition for writ of mandamus to overturn his 2012 convictions on the grounds the trial court failed to reduce his bond when he was arrested in 2011, he received ineffective assistance from trial counsel, and the trial court abused its discretion by failing to accept a plea agreement appellant contends he negotiated with the State for a ten-year sentence. Relator further complains about delays in a pending article 11.07 writ proceeding in which the trial court appointed an attorney to resolve pending factual issues and formulate findings of fact and conclusions of law for the trial court. Relator requests that we issue a writ of mandamus to “correct the trial

court,” remand his cases for a new sentencing hearing, and withdraw our previous opinion and replace it with a new one.¹ Because we lack jurisdiction over relator’s complaints, we dismiss the petitions.

Relator’s petition is a collateral attack on his final felony convictions seeking what should be characterized as article 11.07 habeas relief. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07, §1; *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding); *In re Ayers*, 515 S.W.3d 356, 356–57 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (per curiam); *see also In re Jones*, No. 01-20-00490-CR, 2020 WL 4210489, at *1 (Tex. App.—Houston [1st Dist.] July 23, 2020, orig. proceeding) (mem. op, not designated for publication). Relator states in his petition that he has, in fact, filed two article 11.07 writ applications and the court of criminal appeals has already denied relief in one of them.

We do not have jurisdiction to consider an original application for writ of habeas corpus arising from a criminal proceeding. *See* TEX. CODE CRIM. PROC. ANN. art. 11.05; TEX. GOV’T CODE ANN. § 22.221(d); *Ayers*, 515 S.W.3d at 356–57. Furthermore, we do not have jurisdiction to grant article 11.07 relief or review the trial court’s determinations in article 11.07 proceedings. *See* TEX. CODE CRIM. PROC.

¹ Relator apparently refers to the Court’s opinion affirming his convictions on direct appeal in *Turcios v. State*, No. 05-12-00839-CR, 2013 WL 5536939 (Tex. App.—Dallas Oct. 7, 2013, pet. ref’d) (mem. op., not designated for publication).

ANN. art. 11.07, §§3, 5; *Bd. of Pardons and Paroles ex rel. Keene v. The Eighth Court of Appeals*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995) (orig. proceeding); *see also In re Morrison*, No. 05-15-00519-CV, 2015 WL 1910329, at *1 (Tex. App.—Dallas 2015, orig. proceeding) (mem. op.) (court of appeals has no jurisdiction over complaints that should be raised in post-conviction 11.07 writ application).

Regarding relator’s complaint about the unresolved factual disputes in his pending 11.07 proceeding, only the court of criminal appeals has jurisdiction to order a trial court to rule on a pending article 11.07 writ application. *Padieu v. Court of Appeals of Tex., Fifth Dist.*, 392 S.W.3d 115, 117–18 (Tex. Crim. App. 2013); *see also In re Ward*, No. 12-15-00142-CR, 2015 WL 3505189, at *1 (Tex. App.—Tyler June 3, 2015, orig. proceeding) (mem. op.) (not designated for publication).

When a relator files a petition for writ of mandamus requesting only habeas relief that should be brought in an article 11.07 habeas application, the proper course is to dismiss the petition for want of jurisdiction. *Ayers*, 515 S.W.3d at 356–57; *see also Jones*, 2020 WL 4210489, at *1.

We dismiss relator’s petitions for want of jurisdiction.

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/Ken Molberg//
KEN MOLBERG
JUSTICE