

Opinion issued August 20, 2008



In The
Court of Appeals
For the
First District of Texas

NO. 01-08-00694-CR

IN RE HERMAN R. DIAZ, Relator

Original Proceeding on Petition for Writ of Habeas Corpus

MEMORANDUM OPINION

Relator Herman R. Diaz has filed with this court a post-conviction petition for a writ of habeas corpus relative to the trial court adjudication of a misdemeanor charge of terroristic threat.¹ Appellant asserts that he filed an application for writ of habeas corpus with the convicting trial court, but that it declined to take jurisdiction.

¹The underlying case is Case No. 9437126; In the County Criminal Court at Law No. 5, Harris County, Texas.

Specifically, relator requests that, pursuant to article 11.07 of the Texas Code of Criminal Procedure, this Court “issue a writ of habeas corpus and conduct an evidentiary hearing” Because the underlying matter is not a felony conviction, the habeas corpus proceeding is not governed by the provisions of Article 11.07 of the Texas Code of Criminal Procedure and this court will not take original jurisdiction of the writ. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07, sec.1 (Vernon Supp. 2007) (providing that it applies to felony convictions); *Ex parte Crosley*, 548 S.W.2d 409, 409 (Tex. Crim. App. 1977). “Both county and district courts have original jurisdiction in habeas corpus proceedings when attacks are made upon the validity of misdemeanor convictions; [citations omitted].” *Id.* The courts of appeals’ jurisdiction to issue writs of habeas corpus extends to cases in which the person’s liberty is restrained by virtue of an order, judgment, or decree previously made, rendered or entered by the court or judge in only a *civil* case. TEX. GOV’T CODE ANN. § 22.221(d) (Vernon 2004). When the trial judge denies the writ, a petitioner’s remedy is to present his application to another judge having jurisdiction. *Mayes v. State*, 538 S.W.2d 637, 639 (Tex. Crim. App. 1976) (citing *Nichols v. State*, 255 S.W.2d 522, 526 (Tex. Crim. App. 1953)).

Accordingly, we dismiss relator’s petition for want of jurisdiction. We deny all pending motions.

PER CURIAM

Panel consists of Justices Taft, Jennings, and Bland.