

Opinion issued February 3, 2011.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-10-00311-CR

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IN RE DAVID VILLALON, Relator

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Original Proceeding on Petition for Writ of Mandamus

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**MEMORANDUM OPINION**

Relator, David Villalon, has filed a pro se petition for writ of mandamus, requesting that this Court compel the district court to vacate its stacking order in the underlying case.<sup>1</sup>

More than twenty years ago, relator pleaded guilty to the offense of possession of a deadly weapon in a penal institution and was sentenced to two

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<sup>1</sup> The underlying case is *State v. Villalon*, No. 20,457 in the 23rd District Court of Brazoria County, Texas, the Honorable Ben Hardin presiding.

years' confinement. The trial court's judgment nunc pro tunc includes a stacking order, providing that relator's sentence is cumulative of a sentence for a subsequent offense in another county. According to relator, the stacking order is void because his sentence should be cumulative of the sentence for the original offense for which relator was confined at the time he possessed the weapon.

Relator's conviction is final. There is no indication that relator filed an appeal. He did, however, file two petitions for writ of habeas corpus with the Texas Court of Criminal Appeals. Relator's first petition was denied without opinion. The second petition, which relator asserts challenged the trial court's jurisdiction to issue the stacking order made the basis for this mandamus proceeding, was dismissed as a subsequent writ. Relator complains that, because the Texas Court of Criminal Appeals has denied or dismissed his petitions for a writ of habeas corpus, he is without further appellate remedies and mandamus relief is proper.

This Court does not have jurisdiction to consider relator's request for mandamus relief. Article 11.07 provides the exclusive means to challenge a final felony conviction. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 5 (Vernon Supp. 2010); *Bd. of Pardons & Paroles ex rel Keene v. Court of Appeals for the Eighth District*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995). Jurisdiction to grant post-conviction habeas corpus relief on a final felony conviction rests exclusively with

the Texas Court of Criminal Appeals. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 5; *see In re McAfee*, 53 S.W.3d 715, 717–18 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding).

Accordingly, relator’s petition for writ of mandamus is **dismissed**.

**PER CURIAM**

Panel consists of Chief Justice Radack and Justices Alcala and Bland.

Do not publish. TEX. R. APP. P. 47.2(b).