

Opinion issued November 3, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00658-CV

IN RE LONNIE MACK BROOKS, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Lonnie Mack Brooks, has filed a pro se petition for writ of mandamus, complaining that the respondent, the Galveston County District Clerk, has refused to file Brooks's application for a writ of habeas corpus.¹

¹ Relator has identified the underlying case as the adjudication proceeding from which he seeks habeas relief, No. 88jv310, in the 306th District Court of Galveston County, Texas.

This Court's mandamus jurisdiction is governed by the Texas Government Code. Section 22.221 expressly limits the mandamus jurisdiction of the courts of appeals to: (1) writs necessary to enforce the jurisdiction of the court of appeals and (2) writs against specified district or county court judges in the court of appeals district. TEX. GOV'T CODE ANN. § 22.221(a), (b) (West 2004). We, therefore, lack jurisdiction to issue a writ of mandamus against a district clerk or a court coordinator unless necessary to enforce our jurisdiction. *See id.* § 22.221(a), (b); *see also In re Smith*, 263 S.W.3d 93, 95 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding). Brooks has not shown that issuance of a writ of mandamus is necessary for this court to enforce its jurisdiction. *See* TEX. GOV'T CODE ANN. § 22.221(a), (b); *In re P.L.M.*, No. 01-11-00086-CV, 2011 WL 1234692, at *1 (Tex. App.—Houston [1st Dist.] Mar. 31, 2011, orig. proceeding) (holding this court lacked jurisdiction to issue mandamus against district clerk for refusing to file application for writ of habeas corpus because relator made no showing that issuance of a writ of mandamus was necessary for this court to enforce its jurisdiction); *cf. In re Smith*, 263 S.W.3d 93, 95 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (holding this court could issue mandamus against clerk who refused to file notice of appeal because filing of notice of appeal vests jurisdiction this court).

Nevertheless, a clerk has a “mandatory, ministerial duty” to file documents submitted for filing. *See In re Smith*, 263 S.W.3d at 95. It is then up to the court—not the clerk—to determine whether the court has jurisdiction or otherwise determine the propriety of the filing. *See id.* Additionally, the Texas Court of Criminal Appeals has noted that, while it lacks jurisdiction of a habeas proceeding from an adjudication against a juvenile, district courts have jurisdiction under the Texas Constitution. *See Ex parte Valle*, 104 S.W.3d 888, 890 (Tex. Crim. App. 2003).

We conclude that we do not have jurisdiction to issue a writ of mandamus against respondent. Accordingly, we dismiss Brooks’s petition for lack of jurisdiction, and we dismiss all outstanding motions as moot.²

PER CURIAM

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

² Although this court lacks jurisdiction, the district court has jurisdiction to issue a writ of mandamus against a clerk in appropriate cases. *See In re P.L.M.*, 2011 WL 1234692 at *1 (noting that Texas Government Code section 24.011 grants district court judge mandamus jurisdiction for the enforcement of the court’s jurisdiction).