

Opinion issued March 8, 2012.



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

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NO. 01-12-00112-CR

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**EX PARTE CARLTON PENRIGHT, Applicant**

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**Original Proceeding on Application for Writ of Habeas Corpus**

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NO. 01-12-00119-CR

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**IN RE CARLTON PENRIGHT, Relator**

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**Original Proceeding on Petition for Writ of Mandamus**

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## MEMORANDUM OPINION

Carlton Penright has filed a pro se application for writ of habeas corpus and petition for writ of mandamus.<sup>1</sup> In both proceedings, Penright asserts that his right to a speedy trial has been violated. In the habeas proceeding, Penright asks for a “dismissal with prejudice.” In the mandamus proceeding, Penright requests an order compelling the trial court to proceed with trial immediately. For the reasons explained below, we dismiss the application for writ of habeas corpus for lack of jurisdiction and deny mandamus relief.

In his application for writ of habeas corpus, Penright asserts that he was arrested for the felony offense of aggravated sexual assault with a deadly weapon<sup>2</sup> over two years ago, on January 13, 2010. He also states that he and his attorney “have been ready for trial since day one” and have not requested any continuances or otherwise waived his right to a speedy trial. However, in his petition for writ of mandamus, Penright states that “the State prosecutor(s) and the court appointed Attorney have continued to delay prosecution” in this case. Penright has not included any other facts or a record to show the matters which he has made the subject of these proceedings.

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<sup>1</sup> Penright identifies the underlying proceedings as *The State of Texas v. Carlton Penright*, No. 1247950, 174th District Court, Harris County, Texas.

<sup>2</sup> See TEX. PENAL CODE ANN. § 22.021 (West Supp. 2011).

This court has jurisdiction to issue a writ of habeas corpus in civil cases. TEX. GOV'T CODE ANN. § 22.221(d) (West 2004); *cf.* TEX. CODE CRIM. PROC. ANN. art. 11.05 (West 2005) (listing Court of Criminal Appeals, district courts, and county courts but not courts of appeals as courts having power to issue writs of habeas corpus). A defendant in a criminal case in which there has been no final conviction must first apply for habeas relief from the same court in which the defendant was indicted. TEX. CODE CRIM. PROC. ANN. art. 11.08 (West 2005). If the trial court had denied habeas relief to Penright after a hearing, this court would have jurisdiction over the appeal from that denial. *See Rodriguez v. Court of Appeals*, 769 S.W.2d 554, 557 (Tex.Crim.App.1989); *Ex parte Twyman*, 716 S.W.2d 951, 952 (Tex. Crim. App. 1986). But, we lack jurisdiction over this attempt to seek pre-conviction habeas relief directly from this court. *In re Lozano*, No. 14-12-00049-CR, 2012 WL 274076, at \*1 (Tex. App.—Houston [14th Dist.] Jan. 31, 2012, orig. proceeding) (citing *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex.Crim.App.1991)). We therefore dismiss Penright's application for a writ of habeas corpus for want of jurisdiction.

Concerning Penright's request for mandamus relief, a relator in a mandamus proceeding must show that (1) he has no adequate remedy at law and (2) what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. *Lozano*, 2012 WL 274076, at \*1 (citing *State ex rel. Young v. Sixth*

*Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex.Crim.App.2007) (orig.proceeding)).“Consideration of a request or motion that is properly filed and before the court is a ministerial act.”*Id.* citing (*State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex.Crim.App.1987) (orig.proceeding)). To receive mandamus relief, a relator must show that“the trial court received, was aware of, and asked to rule on the motion.” *Id.* (citing *In re Villarreal*, 96 S.W.3d 708, 710 (Tex.App.—Amarillo 2003, orig. proceeding)). Because Penright does not show that the trial court received any request for a trial setting (or other request for relief from the asserted speedy trial violation) or was asked to rule on any such request, we must deny the petition for writ of mandamus. *See id.* (denying requested mandamus relief based on speedy trial violation where nothing showed trial court had been made aware of or asked to rule on request for trial).

We dismiss Penright’s application for a writ of habeas corpus and deny the petition for writ of mandamus. All pending motions filed in connection with these original proceedings are denied.

**PER CURIAM**

Panel consists of Justices Jennings, Massengale, and Huddle.

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