

Opinion issued August 16, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00540-CR

NO. 01-22-00541-CR

IN RE GABRIEL MARTINEZ, Relator

Original Proceeding on Petition for Writ of Habeas Corpus

MEMORANDUM OPINION

Relator, Gabriel Martinez, incarcerated and acting pro se, has filed a petition for writ of habeas corpus asserting “that he is being held in confinement before the benefit of a fair trial.”¹ Relator requests that the Court release him on a personal

¹ The underlying cases are *The State of Texas v. Gabriel Martinez*, Cause Nos. 21-DCR-097408 and 21-DCR-097409, pending in the 434th District Court of Fort Bend County, Texas, the Honorable J. Christian Becerra presiding.

recognizance bond or that the Court reduce his bond amount to an amount “not to exceed \$100.00 in total cash amount in each of” his underlying criminal cases.

We dismiss the petition for writ of habeas corpus for lack of jurisdiction.

An intermediate court of appeals lacks original habeas jurisdiction in criminal law matters. *See* TEX. GOV’T CODE ANN. § 22.221(d) (original habeas jurisdiction of courts of appeals is limited to cases in which person’s liberty is restrained because person violated order, judgment, or decree entered *in civil case*); *Chavez v. State*, 132 S.W.3d 509, 510 (Tex. App.—Houston [1st Dist.] 2004, no pet.); *see also* TEX. CODE CRIM. PROC. ANN. art. 11.05. In criminal matters, our habeas corpus jurisdiction is appellate only. *See* TEX. GOV’T CODE ANN. § 22.221(d); *Ex parte Denby*, 627 S.W.2d 435, 435 (Tex. App.—Houston [1st Dist.] 1981, orig. proceeding); *see, e.g., In re Abram*, No. 01-19-00858-CR, 2020 WL 201955, at *1 (Tex. App.—Houston [1st Dist.] Jan. 14, 2020, orig. proceeding) (mem. op., not designated for publication) (“If the trial court had denied habeas relief to [r]elator after a hearing, this Court would have jurisdiction over the appeal from that denial.”); *Montalvo v. State*, 315 S.W.3d 588, 589–96 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (reviewing trial court’s order denying pretrial application writ of habeas corpus seeking reduction in bail amount).

Texas Government Code section 22.221 states, in pertinent part:

Concurrently with the supreme court, the court of appeals of a court of appeals district in which a person is restrained in his liberty, or a justice of the court of appeals, may issue a writ of habeas corpus when it appears that the restraint of liberty is by virtue of an order, process, or commitment issued by a court or judge because of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge *in a civil case*. Pending the hearing of an application for a writ of habeas corpus, the court of appeals or a justice of the court of appeals may admit to bail a person to whom the writ of habeas corpus may be granted.

TEX. GOV'T CODE ANN. § 22.221(d) (emphasis added); *see also In re Letizia*, No. 01-18-01052-CR, 2019 WL 610772, at *1 (Tex. App.—Houston [1st Dist.] Feb. 14, 2019, orig. proceeding) (mem. op., not designated for publication); *In re Ayers*, 515 S.W.3d 356, 356 (Tex. App.—Houston [14th Dist.] 2006, orig. proceeding) (“The courts of appeals have no original habeas-corpus jurisdiction in criminal matters. Original jurisdiction to grant a writ of habeas corpus in a criminal case is vested in the Texas Court of Criminal Appeals, the district courts, the county courts, or a judge in those courts.”) (internal citations omitted); *Ex parte Hawkins*, 885 S.W.2d 586, 588 (Tex. App.—El Paso 1994, orig. proceeding) (“[T]his Court’s original jurisdiction to issue a writ of habeas corpus is limited to those cases in which a person’s liberty is restrained because the person has violated an order, judgment, or decree entered in a civil case.”). Original jurisdiction in a criminal proceeding is limited to the Texas Court of Criminal Appeals, the district courts, and the county courts. *See* TEX. CODE CRIM. PROC. ANN. art. 11.05; *In re*

Ayers, 515 S.W.3d at 356; *see also Ex parte Werne*, 118 S.W.3d 833, 836 n.1 (Tex. App.—Texarkana 2003, no pet.) (noting Texas law permits “someone who is incarcerated to file a pretrial application of writ of habeas corpus” in trial court). We are without jurisdiction to consider relator’s petition for writ of habeas corpus. *See Ortiz v. State*, 299 S.W.3d 930, 932 (Tex. App.—Amarillo 2009, orig. proceeding) (court of appeals does not have jurisdiction in original proceeding about “a bail issue”); *see also In re Cruz*, Nos. 01-19-00828-CR, 01-19-00829-CR, 2019 WL 5700245, at *1 (Tex. App.—Houston [1st Dist.] Nov. 5, 2019, orig. proceeding) (mem. op., not designated for publication) (dismissing for lack of jurisdiction relator’s application for writ of habeas corpus seeking release from custody or reduction in bail amount from this Court).

We dismiss relator’s petition for writ of habeas corpus for lack of jurisdiction. All pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Kelly, Countiss, and Rivas-Molloy.

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