

**Petition for Writ of Mandamus Dismissed and Memorandum Opinion filed
December 23, 2010.**



In The

Fourteenth Court of Appeals

NO. 14-10-01220-CR

IN RE JAMES THOMAS GREEN, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On December 13, 2010, relator James Thomas Green filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann §22.221; *see also* Tex. R. App. P. 52.1. In his petition, relator asks that this court compel the respondent, the Honorable Joan Campbell, presiding judge of the 248th District Court in Harris County, to rule on motions presented to the respondent. In the motions relator requests that the respondent enter a judgment of acquittal in trial court cause number 715266. Relator asserts the abandonment of a paragraph in the indictment resulted in an acquittal that is not reflected in the judgment.

In 1995 a jury convicted relator of murder and the trial court sentenced him to confinement for 35 years in the Institutional Division of the Texas Department of Criminal Justice. This court affirmed his conviction. *Green v. State*, No. 14-96-01536-CR, 1999 WL 33620 (Tex. App.—Houston [14th Dist.] Jan. 28, 1999, pet. ref'd) (not designated for publication), *cert. denied*, 529 U.S.1059 (2000).

The substance of the relief sought by relator in his motions is habeas corpus relief following a final felony conviction. Therefore, relator's motions are governed by article 11.07 of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 11.07 § 3. Article 11.07 provides the exclusive means to challenge a final felony conviction. *Board of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995). Such an application for writ of habeas corpus is returnable to the Court of Criminal Appeals. The Court of Criminal Appeals has indicated that it has jurisdiction over original petitions for mandamus in which a relator is seeking to compel the trial court judge to act on an application for habeas corpus relief. *See McCree v. Hampton*, 824 S.W.2d 578, 579 (Tex. Crim. App. 1992). Accordingly, this court lacks jurisdiction over mandamus petitions in which the relator seeks to compel a district court judge to perform duties under article 11.07, section 3 of the Code of Criminal Procedure. *See id*; *see also In re McAfee*, 53 S.W. 3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding). The Court of Criminal Appeals has jurisdiction over such requests for mandamus relief. *See McCree*, at 579.

Accordingly, we dismiss relator's petition for lack of jurisdiction.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Brown.

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