

Petition for Writ of Mandamus Dismissed and Memorandum Opinion filed February 8, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00057-CR

CHRISTOPHER J. EMERSON, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
177th District Court
Harris County, Texas
Trial Court Cause No. 439551**

MEMORANDUM OPINION

On January 21, 2011, relator Christopher J. Emerson filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code. § 22.221; *see also* Tex. R. App. P. 52. In his petition, Emerson asks this court to compel respondent, the Honorable Kevin Fine, presiding judge of the 177th District Court of Harris County, to direct the Texas Department of Criminal Justice and the Texas Board of Pardons and Paroles to restore Emerson's previously accrued good time and grant him credit for his time spent on mandatory supervision. We lack jurisdiction to grant the requested relief.

In 1986, a jury convicted Emerson of aggravated sexual assault and assessed punishment at confinement for thirty-five years in the Texas Department of Corrections (now the Texas Department of Criminal Justice, Institutional Division). *See Emerson v. State*, 756 S.W.2d 364, 365 (Tex. App.—Houston [14th Dist.] 1988, pet. ref'd).

Emerson asserts that he was released to mandatory supervision on June 23, 2000, after serving fourteen and one-half years in prison. His mandatory supervision was revoked in May of 2009. Emerson filed a motion for a *nunc pro tunc* judgment in the 177th District Court in Harris County. The trial court has not granted Emerson relief, and he now seeks relief by petition for writ of mandamus in this court.

Emerson's remedy is by application for writ of habeas corpus. Claims for errors in credit for time served are raised by application for writ of habeas corpus pursuant to Article 11.07 of the Texas Code of Criminal Procedure. *See Ex parte Johnson*, 273 S.W.3d 340, 341 (Tex. Crim. App. 2008) (granting relief on claim for credit for time served on mandatory supervision). In addition, an inmate is required to exhaust the remedies provided in the administrative dispute resolution system before filing his habeas application. *See* Tex. Gov't Code § 501.0081 (requiring inmate alleging that time credited on his sentence is in error to first present this claim to the Texas Department of Criminal Justice office of time credit resolution).

In contrast, claims for credit for *pre-sentence* time served may be raised in a motion for judgment *nunc pro tunc*. If the trial court denies the motion or fails to respond, relief may be sought by filing a petition for writ of mandamus in a court of appeals. *Ex parte Florence*, 319 S.W.3d 695, 696 (Tex. Crim. App. 2010); *see also In re Daisy*, 156 S.W.3d 922, 924-25 (Tex. App.—Dallas 2005, orig. proceeding) (granting relief and ordering trial court to enter *nunc pro tunc* order giving relator credit for time spent in jail “from the time of his arrest and confinement until his sentence by the trial court”).

Only the Court of Criminal Appeals has jurisdiction in final post-conviction habeas

corpus proceedings. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. 1991); *see also* Tex. Code Crim. Proc. art. 11.07; *Board of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995) (holding that article 11.07 provides the exclusive means to challenge a final felony conviction).

Accordingly, Emerson's petition for writ of mandamus is ordered dismissed.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Frost and Christopher.

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