

Petition for Writ of Mandamus Denied and Memorandum Opinion filed March 15, 2011.



In The  
**Fourteenth Court of Appeals**

NO. 14-11-00157-CR

IN RE CHARLES RAY WALTON, Relator

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ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
337th District Court  
Harris County, Texas  
Trial Court Cause No. 1031750-A

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**MEMORANDUM OPINION**

On March 1, 2011, relator Charles Ray Walton 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, relator, who is appearing *pro se* and *in forma pauperis*, complains that respondent, the Honorable Herb Ritchie, presiding judge of the 337th District Court of Harris County, has failed to issue a writ of habeas corpus in response to the application filed pursuant to article 11.07 of the Texas Code of Criminal Procedure.<sup>1</sup> *See* Tex. Code Crim. Proc. art. 11.07, § 3. Relator also complains that respondent has not ruled on various motions that he has filed related to the writ.

To be entitled to mandamus relief in a criminal case, a relator must show that he has no adequate remedy at law to redress his alleged harm, and that what he seeks to compel is

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<sup>1</sup> Relator was convicted of aggravated sexual assault of a child and sentenced to forty years in prison. This court affirmed appellant's conviction on March 8, 2007. *Walton v. State*, No. 14-06-00227-CR, 2007 WL 706582 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd) (not designated for publication), *cert. denied*, 552 U.S. 1283, 128 S.Ct. 1710 (2008).

a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). Consideration of a motion that is properly filed and before the court is a ministerial act. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (orig. proceeding). A relator must establish the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed to do so. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding); *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding) (relator must show that trial court received, was aware of, and was asked to rule on motion).

Only the Texas Court of Criminal Appeals has jurisdiction over matters related to post-conviction relief from a final felony conviction. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. 1991); *see also* Tex. Code Crim. Proc. Ann. 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). Therefore, we lack jurisdiction to grant relief related to the trial court's failure to issue the writ in response to relator's post-conviction application for writ of habeas corpus.

In addition, it is relator's burden to provide this court with a record sufficient to establish his right to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); Tex. R. App. P. 52.3(k), 52.7(a). Relator has not established that (1) the motions about which he complains were properly filed, (2) the trial court had a legal duty to rule on them, and (3) the trial court was asked to rule on them, but failed to do so.

Accordingly, we dismiss relator's challenge concerning the writ of habeas corpus and deny relator's petition for writ of mandamus.

#### PER CURIAM

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

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