

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



In The

Fourteenth Court of Appeals

NO. 14-11-00762-CR

NO. 14-11-00763-CR

NO. 14-11-00764-CR

IN RE RONALD A. NOEL, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
263rd District Court
Harris County, Texas
Trial Court Cause No. 1302670**

MEMORANDUM OPINION

On September 6, 2011, relator Ronald A. Noel 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. In the petition, relator asks this court to compel the Honorable Jim Wallace, presiding

judge of the 263rd District Court of Harris County to forward his application for writ of habeas corpus to the Court of Criminal Appeals.

Upon receipt of an application for a writ of habeas corpus challenging a final felony conviction, the attorney representing the State has 15 days to respond. *See* Tex. Code Crim. Proc. Art. 11.07, § (b). After expiration of the time allowed for the State to respond, the trial court is permitted 20 days to determine whether the application contains allegations of controverted and previously unresolved facts material to the legality of an applicant's confinement. *Id.* art. 11.07, § 3(c). If the trial court determines that the application for writ of habeas corpus presents such issues it "shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating issues of fact to be resolved." *Id.* Thus, the trial court has 35 days to enter an order designating issues after the filing date of an 11.07 application for a writ of habeas corpus. Article 11.07 does not authorize the trial court to extend the time limitations imposed by the statute other than by a timely entry of an order designating issues. *McCree v. Hampton*, 824 S.W.2d 578, 579 (Tex. Crim. App. 1992). Without a timely entry of an order designating issues, article 11.07 imposes a duty upon the clerk of the trial court to immediately transmit to the Court of Criminal Appeals the record from the application for a writ of habeas corpus, deeming the trial court's inaction a finding that no issues of fact require further resolution. Tex. Code Crim. Proc. Ann. art. 11.07, § 3(c).

In this case, relator has failed to establish when he filed his application for writ of habeas corpus, whether the State responded, or whether the trial court acted. Even if relator established those facts, it is not the trial court's duty to forward the application for writ of habeas corpus. It is the district court clerk's duty to forward such applications. *See Dejean v. District Clerk, Dallas County*, 259 S.W.3d 183, 183 (Tex. Crim. App. 2008). This court does not have mandamus jurisdiction over a district clerk unless such is necessary to enforce this court's jurisdiction. *See In re Washington*, 7 S.W.3d 181, 182

(Tex. App.—Houston [1st Dist.] 1999, orig. proceeding) (mem. op.). Because the trial court does not have a duty to forward the application, relator has not established entitlement to the extraordinary relief of a writ of mandamus. Unlike the Court of Criminal Appeals, which has broad constitutional power to issue writs of habeas corpus, mandamus, prohibition, certiorari, or other extraordinary writ, this court has more limited power. The statutory general writ power of this court is limited to “writ[s] of mandamus and all other writs necessary to enforce the jurisdiction of the Court.” *Compare* Tex. Const. art. V, § 5(c) (writ power of Court of Criminal Appeals), with Tex. Gov’t Code Ann. § 22.221(a) (writ power of intermediate court of appeals). Accordingly, we deny relator’s petition for writ of mandamus

PER CURIAM

Panel consists of Justices Frost, Seymore, and Jamison.

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