

Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-08-00570-CR

IN RE Jesus ESPINOZA

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Karen Angelini, Justice
Phylis J. Speedlin, Justice
Steven C. Hilbig, Justice

Delivered and Filed: August 27, 2008

PETITION FOR WRIT OF MANDAMUS DENIED; APPLICATION FOR WRIT OF HABEAS CORPUS DISMISSED FOR LACK OF JURISDICTION

On August 4, 2008, Espinoza filed *pro se* original petitions requesting the issuance of a writ of habeas corpus and a writ of mandamus. Espinoza chiefly complains of the trial court's refusal to set his case for trial. Espinoza is represented by counsel in the trial court. Because Espinoza's complaints relate to his pending criminal case, we conclude that trial counsel is Espinoza's counsel for any mandamus proceeding on the issues presented. Espinoza has no right to proceed *pro se* and be represented by counsel at the same time. *See Patrick v. State*, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995); *Gray v. Shipley*, 877 S.W.2d 806, 806 (Tex. App.—Houston [1st Dist.] 1994, orig.

¹ This proceeding arises out of Cause No. 2007-CR-9689, styled *The State of Texas v. Jesus Espinoza*, pending in the 144th Judicial District Court, Bexar County, Texas, the Honorable Catherine Torres-Stahl presiding.

proceeding). Thus, Espinoza's mandamus petition will be treated as presenting nothing for this court's review.

Additionally, the Court of Criminal Appeals, the district courts, and the county courts are authorized to issue writs of habeas corpus in criminal matters. *See* TEX. CODE CRIM. PRO. ANN. art. 11.05 (Vernon 2005). However, this court has no original habeas corpus jurisdiction in criminal matters. *See Watson v. State*, 96 S.W.3d 497, 500 (Tex. App.—Amarillo 2002, pet. ref'd); *Ex parte Hearon*, 3 S.W.3d 650, 650 (Tex. App.—Waco 1999, orig. proceeding); *Dodson v. State*, 988 S.W.2d 833, 835 (Tex. App.—San Antonio 1999, no pet.).

Accordingly, the mandamus petition is denied and the habeas corpus petition is dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH