



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00732-CR

IN RE Michael Joseph GRIFFITH

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: December 20, 2017

PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED

On November 3, 2017, relator Michael Joseph Griffith filed a petition for writ of mandamus, complaining of the trial court's refusal to rule on his "Motion for Appointment of Attorney and the Granting of an Evidentiary Hearing." In his petition for writ of mandamus, relator contends his 1991 plea bargains are illegal and void and he needs an attorney appointed to represent him in pursuing "a valid 11.07 writ." Relator also appears to request the transcripts and other documents related to his plea bargains.

After relator filed his petition, the State filed a response in which it admitted: (1) relator's motion was received by the Clerk on August 25, 2017; (2) the Clerk forwarded the motion to the District Attorney on August 28, 2017; (3) the Clerk also forwarded the motion to the Honorable

¹ This proceeding arises out of Cause Nos. 4285-91 and 4286-91, styled *State of Texas v. Michael Joseph Griffith*, formerly pending in the 198th Judicial District Court, Mason County, Texas. Relator's motion was filed in the 452nd District Court, Mason County, Texas, the Honorable Robert Rey Hofmann presiding.

Robert Hofmann; (4) Judge Hofmann advised the Clerk that, “On this one, do nothing”; (5) relator contacted the Clerk on September 23, 2017, inquiring about the status of his motion; and (6) the Clerk informed relator on September 28, 2017 “that Judge Hofmann had instructed her [the Clerk] to ‘do nothing’ on his case.”

In its response to relator’s petition, the State asserts, with no elaboration or citation to authority, that the trial court does not have jurisdiction to grant relator’s motion, and this court has no jurisdiction to order a trial court to rule in a particular way. Finally, the State contends that to the extent the trial court had jurisdiction to rule, “it denied the motion with its instructions to the Clerk to ‘do nothing,’ which information was conveyed to Relator.” Thus, according to the State, relator has already obtained all the relief he seeks.² We disagree.

Only the Court of Criminal Appeals possesses the authority to grant relief in a post-conviction habeas corpus proceeding where there is a final felony conviction. *Padieu v. Court of Appeals of Tx., Fifth Dist.*, 392 S.W.3d 115, 117 (Tex. Crim. App. 2013). However, in this case, relator has not filed an application for a writ of habeas corpus. Instead, he is asking the trial court to appoint him an attorney (and possibly provide him with certain records) for the purpose of filing such an application. The Texas Court of Criminal Appeals has held, “we perceive no reason why our exclusive Article 11.07 jurisdiction divests an appellate court of jurisdiction to decide the merits of a mandamus petition alleging that a district judge is not ruling on a motion when the relator has no Article 11.07 application pending.” *Id.* at 117-18 (“Although the records he seeks may be intended for preparation of an eventual habeas corpus application, the issue here is simply whether the trial judge has a duty to act upon his pending motion.”). Therefore, this court has the authority to consider the merits of relator’s petition under the circumstances presented here. *See*

² The respondent declined the opportunity to file a response to relator’s petition.

id. at 118 (“when there is no pending application for habeas corpus filed under Article 11.07 of the Code of Criminal Procedure, the appellate court is not without jurisdiction to rule on mandamus petitions relating to a motion requesting access to material that could be used in a future habeas application”).

A trial court’s instruction to a clerk to “do nothing” is not a ruling on the merits of a pending motion. Although we may not instruct the trial court what its ruling should be, this court may compel a trial court to exercise its ministerial duty to rule. *See Crofts v. Court of Civ. Appeals, Eighth Judicial Dist.*, 362 S.W.2d 101, 105 (Tex. 1962) (orig. proceeding); *In re Martinez Ramirez*, 994 S.W.2d 682, 684 (Tex. App.—San Antonio 1998, orig. proceeding). Because a properly-filed motion has been brought to the attention of the trial court and the trial court has refused to rule on the motion, we conditionally grant relator’s petition for writ of mandamus. The writ will issue only if the trial court fails to rule on the “Motion for Appointment of Attorney and the Granting of an Evidentiary Hearing” within fifteen days.

PER CURIAM

DO NOT PUBLISH