

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-08-382 CV

IN RE MARCUS EUGENE POLLARD

Original Proceeding

MEMORANDUM OPINION

Marcus Eugene Pollard filed a petition for writ of mandamus in which he seeks to compel the trial court to rule on a post-conviction motion for DNA testing Pollard filed in Cause No. 9222. Although Pollard referred to forensic DNA testing in his motion to the trial court, the specific tests Pollard actually asks for in his motion are “fingerprint tests, shot pattern tests, distance tests and GSR [gun shot residue] tests.” The motion does not allege that there is any biological material that was in the possession of the State during the trial of the offense but which was not previously subjected to DNA testing. *See* TEX. CODE. CRIM. PROC. ANN. art. 64.01 (Vernon Supp. 2008). Furthermore, Pollard states that his motion also was filed as an exhibit to a state post-conviction habeas corpus application. Mandamus relief

in a post-conviction habeas proceeding must be obtained from the Court of Criminal Appeals. *In re McAfee*, 53 S.W.3d 715, 718 (Tex. App--Houston [1st Dist.] 2001, orig. proceeding).

The relator fails to establish that he is entitled to the relief requested in the petition for writ of mandamus. Accordingly, the petition is denied.

PETITION DENIED.

PER CURIAM

Opinion Delivered October 16, 2008

Before McKeithen, C.J., Kreger and Horton, JJ.