

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00450-CV

IN RE DONALD FOSTER

Original Proceeding

MEMORANDUM OPINION

A petition for writ of mandamus filed by Donald Foster asks this Court to order the trial court to rule on motions Foster has filed in three cases. Foster's motions, which request access to grand jury and trial court records, have been filed in cases that resulted in final felony convictions. Foster alleges that he is seeking access to the records for the purpose of preparing applications for post-conviction writs of habeas corpus.¹ *See* Tex. Code Crim. Proc. Ann. art. 11.07 (West Supp. 2010).

The merits of the relief sought must be beyond dispute for the relator to show that he has a clear right to mandamus relief. *See Winters v. Presiding Judge of Criminal Dist.*

¹These would be subsequent habeas proceedings. *See Ex parte Foster*, Nos. WR-42,776-16, WR-42,776-17, and WR-42,776-168 (Tex. Crim. App. Nov. 10, 2004), available at <http://www.cca.courts.state.tx.us/opinions/handdown.asp?FullDate=20041110>.

Court Number Three of Tarrant County, 118 S.W.3d 773, 775 (Tex. Crim. App. 2003). Generally, the trial court has a duty to rule on a properly and timely filed motion within a reasonable time. *See State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987); *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding). In Foster’s case, however, there are no active proceedings presently before the convicting court. Moreover, mandamus relief relating to a post-conviction habeas proceeding must be obtained from the Court of Criminal Appeals. *See In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding) (request for hearing on habeas application); *see also In re Newman*, No. 14-08-00064-CV, 2008 WL 323762 (Tex. App.—Houston [14th Dist.] Feb. 7, 2008, orig. proceeding) (mem. op.) (request for discovery and inspection of evidence); *In re Green*, No. 01-05-00056-CR, 2005 WL 375311 (Tex. App.—Houston [1st Dist.] Feb. 17, 2005, orig. proceeding) (mem. op.) (request for access to evidence to prepare habeas petition).

Foster has neither shown that he has a clear and indisputable right to have the trial court consider and rule upon his motions at this time, nor has Foster shown that he is presently entitled to mandamus relief from this Court. Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Opinion Delivered October 28, 2010
Before Gaultney, Kreger, and Horton, JJ.