

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00071-CV

IN RE DON ALLEN WHITAKER

Original Proceeding

MEMORANDUM OPINION

A petition for writ of mandamus filed by Don Allen Whitaker asks this Court to order the judge presiding in the trial court to either recuse herself from post-conviction habeas proceedings or request that the presiding judge of the administrative judicial district assign a judge to hear Whitaker's motion to recuse. *See generally* Tex. Code Crim. Proc. Ann. art. 11.07 (West Supp. 2010); Tex. R. Civ. P. 18a.

Mandamus relief relating to 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) (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). Complaints regarding the trial court's failure to address a recusal motion filed in post-conviction habeas proceedings should be addressed to the Court of Criminal Appeals.¹ See *Ex parte Sinegar*, 324 S.W.3d 578, 580 (Tex. Crim. App. 2010) (citing *Ex parte Sinegar*, No. AP-76-340, slip op., 2010 WL 1794960 (Tex. Crim. App. May 5, 2010) (not designated for publication)) (addressing complaint regarding failure to act on motion to recuse filed in a post-conviction habeas proceeding).

Whitaker has not 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 March 10, 2011

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

¹The Court of Criminal Appeals denied Whitaker's habeas application on February 23, 2011. See *Ex parte Whitaker*, No. WR-75,267-01, available at <http://www.cca.courts.state.tx.us/opinions/Case.asp?FilingID=278500>.