

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00563-CR

IN RE MICHAEL W. BOHANNAN

Original Proceeding

MEMORANDUM OPINION

In a petition for writ of mandamus, Michael A. Bohannan seeks to compel the Judge of the 284th District Court of Montgomery County, Texas, to rule upon a pre-trial habeas corpus petition that alleges a double jeopardy bar to the prosecution of the indictment filed in Cause No. 11-04-04462-CR. We deny the petition for writ of mandamus.

“[W]hen a motion is properly filed and pending before a trial court, the act of considering and resolving it is ministerial.” *Ex parte Bates*, 65 S.W.3d 133, 134-35 (Tex. App.—Amarillo 2001, orig. proceeding). The criminal case has been assigned to the 435th District Court. *See* Tex. Gov’t Code Ann. § 24.579 (West Supp. 2011) (requiring

the 435th District Court to give preference to criminal cases involving violation of an order of civil commitment). Relator's pre-trial habeas proceeding has been assigned to the court in which the indictment is pending. *See* Tex. Code Crim. Proc. Ann. art. 11.08 (West 2005) ("If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted[.]"); *see generally* Montgomery Cnty (Tex.) Dist. Ct. Loc. R. 5. Thus, Bohannan's pre-trial habeas petition is not presently filed in the 284th District Court.

Relator argues that Article 11.08 is permissive and he may present his petition to another court with jurisdiction. *See Garber v. State*, 667 S.W.2d 611, 613 (Tex. App.—El Paso 1984, no pet.). Presuming that a court other than the court in which an indictment is pending may, under some circumstances, address the merits of a pre-trial writ of habeas corpus, that is immaterial in this case where the pre-trial habeas proceeding has been assigned to the court in which the indictment is pending. We further note that trial courts have broad discretion to transfer cases on their dockets. *In re Guideone Lloyds Ins. Co.*, No. 09-08-472 CV, 2008 WL 4821569, at *1 (Tex. App.—Beaumont Nov. 5, 2008, orig. proceeding [mand. denied]) (mem. op.).

To be entitled to a writ of mandamus in a criminal case, the relator must demonstrate that he has a clear and indisputable right to the relief sought. *See State v. Patrick*, 86 S.W.3d 592, 594 (Tex. Crim. App. 2002). Bohannan has not shown that the

judge of the 284th District Court has failed to act upon a petition that is presently before that court. Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Submitted on December 1, 2011
Opinion Delivered December 14, 2011
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Before McKeithen, C.J., Gaultney and Horton, JJ.