



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00221-CR

ALLEN FITZGERALD CALTON

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 0843168D

MEMORANDUM OPINION¹

Appellant Allen Fitzgerald Calton attempts to appeal from the trial court's dismissal of his petition for bill of review for want of jurisdiction. In its order, the trial court "note[d] that the exclusive remedy available to a Texas defendant seeking relief from a final felony conviction is through a writ of habeas corpus pursuant to Tex. Code Crim. Proc. art. 11.07." Because we also lack jurisdiction,

¹See Tex. R. App. P. 47.4.

we dismiss this appeal for want of jurisdiction.

Background

In 2004, a jury convicted Appellant of attempted murder, and the trial court sentenced him to life in prison. We affirmed the trial court's judgment. See *Calton v. State*, No. 2-04-228-CR, 2005 WL 3082202, at *1-5 (Tex. App.—Fort Worth Nov. 17, 2005, pet. withdrawn) (mem. op., not designated for publication). Mandate issued February 17, 2006. *In re Calton*, No. 02-15-00280-CV, 2015 WL 5175467, at *1 (Tex. App.—Fort Worth Sept. 4, 2015, orig. proceeding) (mem. op.).

As of April 2009, Appellant had already filed seven applications for writ of habeas corpus in the trial court to no avail, and the Texas Court of Criminal Appeals cited the final application for abuse of the writ. *Calton v. State*, No. 2-08-208-CR, 2009 WL 976004, at *1 (Tex. App.—Fort Worth Apr. 9, 2009, pet. ref'd) (mem. op., not designated for publication). Appellant's application for writ of habeas corpus in federal court was denied on December 1, 2008. *Id.*

Discussion

The relief Appellant sought in the trial court with his April 2016 petition for bill of review was a new or out-of-time appeal of his attempted murder conviction and sentence and “any and all other relief . . . to which [he] may justly be entitled.” Thus, Appellant is attempting to again collaterally attack his 2004 attempted murder conviction and life sentence.

Article 11.07 of the code of criminal procedure provides the exclusive

procedure for an applicant to collaterally attack a final felony conviction not involving the death penalty. Tex. Code Crim. Proc. Ann. arts. 11.05, 11.07 (West 2015); *Bd. of Pardons & Paroles ex rel. Keene v. Ct. of App. for Eighth Dist.*, 910 S.W.2d 481, 482–83 (Tex. Crim. App. 1995) (orig. proceeding); *Wilkerson v. State*, Nos. 05-15-01045-CR, 05-15-01046-CR, 2015 WL 5179090, at *1 (Tex. App.—Dallas Sept. 3, 2015, no pet.) (mem. op., not designated for publication); *Witherspoon v. State*, No. 02-10-00174-CV, 2011 WL 5515469, at *2 (Tex. App.—Fort Worth Nov. 10, 2011, pet. denied) (mem. op.). Only the Texas Court of Criminal Appeals has jurisdiction to grant postconviction habeas corpus relief on a final felony conviction. *Bd. of Pardons & Paroles ex rel. Keene*, 910 S.W.2d at 483; *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding); see Tex. Code Crim. Proc. Ann. arts. 11.05, 11.07, § 5. We do not have jurisdiction over such postconviction habeas proceedings. *Self v. State*, Nos. 02-15-00193-CR, 02-15-00194-CR, 2015 WL 4497727, at *1 (Tex. App.—Fort Worth July 23, 2015, pet. ref'd) (mem. op., not designated for publication); see Tex. Code Crim. Proc. Ann. art. 11.05; *In re Calton*, No. 05-16-00593-CV, 2016 WL 3193477, at *1 (Tex. App.—Dallas May 26, 2016, orig. proceeding) (mem. op.) (holding neither Dallas Court of Appeals nor Fort Worth Court of Appeals had jurisdiction to entertain a collateral attack on Appellant's conviction).

Conclusion

Because we do not have jurisdiction, we dismiss this appeal for want of jurisdiction.

PER CURIAM

PANEL: PITTMAN, J.; LIVINGSTON, C.J.; and WALKER, J.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: June 1, 2017