



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-17-00102-CR

IN RE RUBEN GEOVANNY HERNANDEZ

Original Mandamus Proceeding

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

Arguing that the judgment entered in his case is “improper and void,” Ruben Hernandez has petitioned this Court for a writ of mandamus asking either that this Court “vacate the sentence or conviction” or issue a writ ordering and directing the 354th Judicial District Court to do so. We deny the petition.

To be entitled to mandamus relief, the relator must show (1) that he has no adequate remedy at law and (2) that the action he seeks to compel is ministerial, not one involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). The relator is obligated to provide this Court with a record sufficient to establish his right to be granted mandamus relief. *In re Fox*, 141 S.W.3d 795, 797 (Tex. App.—Amarillo 2004, orig. proceeding); *In re Mendoza*, 131 S.W.3d 167, 167–68 (Tex. App.—San Antonio 2004, orig. proceeding); *see* TEX. R. APP. P. 52.3(k), 52.7(a).

Here, under statute Section 481.112(f) of the Texas Health and Safety Code, Hernandez was indicted on, tried for, and convicted of manufacture/delivery of a controlled substance in an amount of 400 grams or more, and he was sentenced to the minimum sentence of fifteen years’ incarceration. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(f) (West 2017). However, the judgment incorrectly lists his offense as possession of 400 grams or more of a controlled substance

and the statute for the offense as Section 481.115(f), which carries the lower minimum sentence of ten years.¹

Hernandez contends that the discrepancies render the judgment of conviction and/or his sentence void, and he asks this Court for a writ of mandamus, asking either that we “vacate the sentence or conviction” or issue a writ ordering and directing the trial court to do so. His petition for a writ of mandamus represents a collateral attack on his conviction. The only proper means of collaterally attacking a final felony conviction is by means of a petition for a writ of habeas corpus under Article 11.07 of the Code of Criminal Procedure. TEX. CODE CRIM. PROC. ANN. art. 11.07, § 5 (West 2015) (“After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.”); *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding) (in granting writ of mandamus to vacate judgment of conviction, court of appeals usurped the exclusive authority of Court of Criminal Appeals to grant post-conviction relief). This Court has no jurisdiction over complaints that may only be raised by post-conviction habeas corpus

¹Under “Degree of Offense,” the judgment lists the correct range of punishment of between fifteen years’ and ninety-nine years’ or life incarceration.

proceedings brought under Article 11.07. *See* TEX. CODE CRIM. PROC. ANN. arts. 11.05, 11.07 (West 2015).

Therefore, we deny Hernandez' petition.

Ralph K. Burgess
Justice

Date Submitted: June 26, 2017
Date Decided: June 27, 2017

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