



**IN THE
TENTH COURT OF APPEALS**

No. 10-16-00076-CR

EX PARTE WENDELL CARL HORNE, III

Original Proceeding

MEMORANDUM OPINION

On March 7, 2016, Wendell Carl Horne, III filed an application for writ of habeas corpus in this Court pursuant to article 11.07 of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2015). In his filing, Horne argues that even though he waived his right to appeal, he can raise a no-evidence challenge to the evidence in an application for writ of habeas corpus.

Article 11.07 of the Texas Code of Criminal Procedure provides:

Sec. 3. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challenged

was obtained, and the clerk shall assign the application to that court. When the application is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. . . .

Id. art. 11.07, § 3(a)-(b). An intermediate court of appeals has no jurisdiction over post-conviction writs of habeas corpus in felony cases. *See Ex parte Martinez*, 175 S.W.3d 510, 512-13 (Tex. App.—Texarkana 2005, orig. proceeding); *Self v. State*, 122 S.W.3d 294, 294-95 (Tex. App.—Eastland 2003, no pet.); *see also Ex parte Beard*, No. 10-15-00252-CR, 2015 Tex. App. LEXIS 8522, at **1-2 (Tex. App.—Waco Aug. 13, 2015, orig. proceeding). Moreover, the Court of Criminal Appeals and this Court have recognized that “the exclusive post-conviction remedy in final felony convictions in Texas courts is through a writ of habeas corpus pursuant to [article] 11.07.” *Olivo v. State*, 918 S.W.2d 519, 525 n.8 (Tex. Crim. App. 1996); *see Ex parte Mendenhall*, 209 S.W.3d 260, 261 (Tex. App.—Waco 2006, no pet.); *see also Ex parte Beard*, 2015 Tex. App. LEXIS 8522, at *2.

Because we have no jurisdiction over a post-conviction habeas corpus proceeding in a felony case, we dismiss Horne’s application for lack of jurisdiction. *See Olivo*, 918 S.W.2d at 525 n.8; *Ex parte Mendenhall*, 209 S.W.3d at 261; *Ex parte Martinez*, 175 S.W.3d at 512-13; *Self*, 122 S.W.3d at 294-95; *see also Ex parte Beard*, 2015 Tex. App. LEXIS 8522, at **1-2.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Dismissed

Opinion delivered and filed March 24, 2016

Do not publish

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