



**IN THE  
TENTH COURT OF APPEALS**

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**No. 10-18-00131-CR**

**IN RE DAVID R. GRIFFITH**

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**Original Proceeding**

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**MEMORANDUM OPINION**

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Relator David R. Griffith seeks a writ of mandamus to vacate his judgment of conviction. In one issue, Griffith asserts that the trial court lacked subject-matter jurisdiction to preside over his criminal trial. We will deny his request for mandamus relief.

Griffith was convicted of the offense of continuous sexual abuse of his daughter, who was under the age of fourteen when the abuse occurred. Griffith appealed his conviction in cause number 10-14-00245-CR, and we affirmed the trial court's verdict. The Honorable Amanda Putman, judge of the Navarro County Court at Law, presided over Griffith's trial. Griffith contends his case was improperly transferred to Judge Putman, divesting the court of jurisdiction and making his judgment void. Specifically,

Griffith notes that by statute a felony case may only be transferred by assignment from the presiding judge in Navarro County and by acceptance of the Navarro County Court at Law and that the record does not reflect that a formal acceptance of jurisdiction by the Navarro County Court at Law was made in his case. Assuming without deciding that the transfer of Griffith's case was procedurally flawed, we conclude that Griffith should have raised any such error in his direct appeal.

In a case factually similar to Griffith's, we determined that an error in the procedure by which a judge presides over a trial renders a judgment voidable rather than void and must be initially challenged at the trial court level. *See Colomb v. State*, No. 10-08-00039-CR, 2009 WL 1163413 at \*2 (Tex. App. — Waco Apr. 29, 2009, no pet.) (mem. op., not designated for publication); *see also Davis v. State*, 956 S.W.2d 555, 559 (Tex. Crim. App. 1997) (“[I]f a judge is qualified and not constitutionally or statutorily disqualified, his actions are not void due to procedural irregularities in the manner in which the case came before that individual, although it may be error rendering the conviction voidable.”). A collateral attack is permissible when challenging a judgment that is void, not one that is merely voidable. *Colomb*, 2009 WL 1163413 at \*2; *see also Nix v. State*, 65 S.W.3d 664, 667-68 (Tex. Crim. App. 2001) (“A void judgment is a ‘nullity’ and can be attacked at any time.”). A judgment of conviction is void only in rare circumstances, usually due to a lack of jurisdiction. *Nix*, 65 S.W.3d at 668. As in *Colomb*, we are not presented here “with the question of a judge who is disqualified as a matter of law” nor “with a question of lack of jurisdiction of the convicting court.” *Colomb*, 2009 WL 1163413

at \*2. By failing to raise the procedural error in his direct appeal, Griffith is now precluded from raising it in a petition for writ of mandamus.

In light of the foregoing, we deny Griffith's petition for writ of mandamus.

REX D. DAVIS  
Justice

Before Chief Justice Gray,  
Justice Davis, and  
Justice Scoggins

Petition denied

Opinion delivered and filed May 23, 2018

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