

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00643-CV

In re Robert Lee Martin

**FROM THE 299TH DISTRICT COURT OF TRAVIS COUNTY,
NO. 955530, THE HONORABLE KAREN SAGE, JUDGE PRESIDING**

MEMORANDUM OPINION

Relator Robert Lee Martin, an inmate in the Texas Department of Criminal Justice, has filed a pro se petition for writ of mandamus in this Court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52.1. Martin seeks mandamus relief from this Court concerning a motion titled "Motion for Leave to File Original Petition for Writ of Habeas Corpus Pursuant to Art. 11.01" and a "Writ of Habeas Corpus Pursuant to Art. 11.01 Fundamental Error Illegal Restraint," both of which he filed with the Travis County District Clerk. In his petition for writ of mandamus, he asserts that the trial court has a ministerial duty to rule on his motion and his petition for writ of habeas corpus.

The exclusive post-conviction remedy in final felony convictions in Texas courts is through a writ of habeas corpus pursuant to Article 11.07 of the Texas Code of Criminal procedure. Tex. Code Crim. Proc. art. 11.07 § 5 ("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."); *Olivo v. State*, 918 S.W.2d 519, 525 n.8 (Tex. Crim. App. 1996). Only the court of criminal appeals has jurisdiction over post-conviction writs of habeas corpus in

felony cases. *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991). Because Martin's petition for mandamus relief is based on the trial court's failure to act on his post-conviction writ of habeas corpus, we lack jurisdiction over his complaint.¹ *See McCree v. Hampton*, 824 S.W.2d 578, 579 (Tex. Crim. App. 1992) (denying mandamus relief when petitioner sought to compel trial court to act on petition for writ of habeas corpus).

The petition for writ of mandamus is dismissed for want of jurisdiction. *See* Tex. R. App. P. 52.8(a).

Cindy Olson Bourland, Justice

Before Justices Puryear, Pemberton, and Bourland

Filed: February 23, 2018

¹ Martin states in his petition for writ of mandamus that he has no adequate remedy at law because he has already exhausted his remedy pursuant to Article 11.07, but exhaustion of his remedy under Article 11.07 does not change the fact that Article 11.07 provides the exclusive post-conviction remedy in a final felony conviction. *See* Tex. Code Crim. Proc. art. 11.07 § 5.