

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-17-00736-CV**

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**In re Nathaniel Frazier**

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**ORIGINAL PROCEEDING FROM TOM GREEN COUNTY**

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**MEMORANDUM OPINION**

Nathaniel Frazier was convicted of assault family violence and sentenced to eighteen years' imprisonment. *See* Tex. Penal Code § 22.01. Several years after his felony conviction, Frazier filed an application for writ of habeas corpus with the district court in Tom Green County. *See* Tex. Code Crim Proc. art. 11.07. Subsequent to that filing, Frazier filed a petition for writ of mandamus asking this Court to order the district court clerk "to acknowledge the receipt of" his writ application, to compel the State "to respond to" his writ application, and to require the district court "to rule on" his writ application.

Only the court of criminal appeals "has jurisdiction over matters related to final post-conviction felony proceedings." *In re Williams*, No. 13-14-00412-CR, 2014 WL 3731451, at \*1 (Tex. App.—Corpus Christi July 22, 2014, orig. proceeding) (mem. op., not designated for publication); *see* Tex. Code Crim. Proc. art. 11.07, § 5; *see also Board of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995) (orig. proceeding) (providing that "[a]rticle 11.07 provides the exclusive means to challenge a final felony conviction" and that "[j]urisdiction to grant post conviction habeas corpus relief on a final

felony conviction rests exclusively with [the Court of Criminal Appeals]”). Although the court of criminal appeals has explained that its exclusive jurisdiction does not prohibit an appellate court from considering the merits of a mandamus petition alleging that a district judge is not ruling on a motion when no Article 11.07 application is pending, *see Padieu v. Court of Appeals of Tex., Fifth Dist.*, 392 S.W.3d 115, 118 (Tex. Crim. App. 2013) (orig. proceeding) (explaining that appellate courts may have jurisdiction “to rule on mandamus petitions” “when there is no pending application for writ of habeas corpus”), those circumstances are not present here. The documents accompanying Frazier’s mandamus petition demonstrate that Frazier filed an application for writ of habeas corpus under article 11.07, and the official website for the court of criminal appeals shows that the court received the application on February 12, 2018. *See* <http://search.txcourts.gov/Case.aspx?cn=WR-88,087-01&coa=coscca> (last visited February 20, 2018). Moreover, in response to an inquiry by this Court, the district court clerk’s office related that the State has prepared an affidavit and answer to Frazier’s writ application and that the application and response have been forwarded to the court of criminal appeals.

In light of the record before this Court and in light of the fact that Frazier’s application and the State’s response have been sent to the court of criminal appeals, we must conclude that this Court does not have jurisdiction over Frazier’s petition. *See Padieu*, 392 S.W.3d at 117-18; *see also In re Lozano*, No. 14-14-00276-CR, 2014 WL 1516196, at \*1 (Tex. App.—Houston [14th Dist.] Apr. 17, 2014, orig. proceeding) (mem. op., not designated for publication) (concluding that appellate court did not have jurisdiction over mandamus petition requesting that trial court be ordered to rule on motion because “it appears that relator filed this

motion in connection with a pending article 11.07 application”); *In re Hamilton*, No. 03-13-00384-CV, 2013 WL 3336839 at \*1 (Tex. App.—Austin June 26, 2013, orig. proceeding) (mem. op.) (determining that appellate court did not have jurisdiction over mandamus petition regarding motion filed with trial court “in connection with . . . writ of habeas corpus” because documents accompanying mandamus petition show that relator filed petition for writ of habeas corpus and because application was filed and denied). Accordingly, Frazier’s petition for writ of mandamus is dismissed for lack of jurisdiction. *See* Tex. R. App. P. 52.8(a).

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David Puryear, Justice

Before Justices Puryear, Pemberton, and Bourland

Filed: February 22, 2018