



**NUMBER 13-17-00668-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**IN RE JOSEPH FOLSE**

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**On Petition for Writ of Mandamus.**

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**MEMORANDUM OPINION**

**Before Chief Justice Valdez and Justices Contreras and Benavides  
Memorandum Opinion by Justice Benavides<sup>1</sup>**

On December 5, 2017, Joseph Folse filed a pro se pleading in this Court requesting assistance in setting aside his felony conviction for driving under the influence and preventing further prosecution for this offense. This Court has reviewed Folse's conviction for felony driving under the influence on direct appeal. See *Folse v. State*, 479 S.W.3d 913, 914 (Tex. App.—Corpus Christi 2015, pet. ref'd). Because Folse appears to be asking this Court to command the trial court and other officials to perform various

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<sup>1</sup> See TEX. R. APP. P. 52.8(d) ("When denying relief, the court may hand down an opinion but is not required to do so."); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

acts with regard to Folsie's prosecution and conviction, we construe Folsie's pleading as a petition for writ of mandamus. See generally TEX. R. APP. P. 25.1(a), (d); *In re Castle Tex. Prod. Ltd. P'ship*, 189 S.W.3d 400, 403 (Tex. App.—Tyler 2006, orig. proceeding) (“The function of the writ of mandamus is to compel action by those who by virtue of their official or quasi-official positions are charged with a positive duty to act.”) (citing *Boston v. Garrison*, 152 Tex. 253, 256 S.W.2d 67, 70 (1953)).

To be entitled to mandamus relief, the relator must establish both that he has no adequate remedy at law to redress his alleged harm, and that what he seeks to compel is a purely ministerial act not involving a discretionary or judicial decision. *In re Harris*, 491 S.W.3d 332, 334 (Tex. Crim. App. 2016) (orig. proceeding); *In re McCann*, 422 S.W.3d 701, 704 (Tex. Crim. App. 2013) (orig. proceeding). If the relator fails to meet both of these requirements, then the petition for writ of mandamus should be denied. *State ex rel. Young v. Sixth Jud. Dist. Ct. of Apps. at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007). It is the relator's burden to properly request and show entitlement to mandamus relief. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (“Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.”); see generally TEX. R. APP. P. 52.3.

Article 11.07 vests jurisdiction over post-conviction relief from otherwise final felony convictions in the Texas Court of Criminal Appeals. See TEX. CODE CRIM. PROC. ANN. art. 11.07 (West, Westlaw through 2017 1st C.S.); *Board of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995); *In re Watson*, 253 S.W.3d 319, 320 (Tex. App.—Amarillo 2008, orig. proceeding). The intermediate courts of appeal have no role in criminal law matters pertaining to

proceedings under article 11.07 and have no authority to issue writs of mandamus in connection with such proceedings. See TEX. CODE CRIM. PROC. ANN. art. 11.07, §§ 3; 5; *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 242 (Tex. Crim. App. 1991) (orig. proceeding); *In re Briscoe*, 230 S.W.3d 196, 197 (Tex. App.—Houston [14th Dist.] 2006, orig. proceeding) (per curiam); *In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding).

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that we lack jurisdiction over this matter. Accordingly, we DISMISS relator's petition for lack of jurisdiction.

GINA M. BENAVIDES,  
Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed this the  
5th day of December, 2017.