

NO. 12-15-00271-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JODY FORD MCCREARY,
APPELLANT

§ ***APPEAL FROM THE 7TH***

V.

§ ***JUDICIAL DISTRICT COURT***

THE STATE OF TEXAS,
APPELLEE

§ ***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION
PER CURIAM

In 2011, Appellant was convicted of tampering with physical evidence, a third degree felony. *See* TEX. PENAL CODE ANN. § 37.09(a)(1) (West Supp. 2015).¹ Appellant previously attempted to appeal this conviction, but his notice of appeal was late, and the appeal was dismissed for want of jurisdiction. *See generally McCreary v. State*, No. 12-11-00311-CR, 2011 WL 4971606 (Tex. App.–Tyler Oct. 19, 2011, no pet.) (per curiam) (mem. op., not designated for publication).

Appellant has now filed a *pro se* notice of appeal from the trial court’s order denying his postconviction application for writ of habeas corpus pursuant to Texas Code of Criminal Procedure Article 11.07. An Article 11.07 writ of habeas corpus is returnable to the Texas Court of Criminal Appeals, and the convicting court’s order may not be appealed to this court. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07 § 3 (West Supp. 2014); *Williams v. State*, No. 14-14-00495-CR, 2014 WL 3962711, at *1 (Tex. App.–Houston [14th Dist.] Aug. 14, 2014, no pet.) (per curiam) (mem. op., not designated for publication). Thus, only the court of criminal appeals has jurisdiction to review postconviction habeas corpus proceedings. *See Bd. of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483

¹ Although Section 37.09 has been amended since Appellant’s conviction, subsection (a)(1) was not affected. Therefore, we cite to the current version for convenience.

(Tex. Crim. App. 1995) (holding that Article 11.07 provides exclusive means to challenge final felony conviction); *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (holding that court of criminal appeals is “only court with jurisdiction in final post-conviction felony proceedings”). Accordingly, we *dismiss* this appeal *for want of jurisdiction*.

Opinion delivered November 18, 2015.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 18, 2015

NO. 12-15-00271-CR

JODY FORD MCCREARY,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 7th District Court

of Smith County, Texas (Tr.Ct.No. 007-1110-10)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.

Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.