

**NO. 12-17-00278-CR**  
**IN THE COURT OF APPEALS**  
**TWELFTH COURT OF APPEALS DISTRICT**  
**TYLER, TEXAS**

*IN RE:* §  
*JODY FORD MCCREARY,* § *ORIGINAL PROCEEDING*  
*RELATOR* §

---

***MEMORANDUM OPINION***  
***PER CURIAM***

Relator, Jody Ford McCreary, was convicted in 2011 of tampering with physical evidence, a felony offense. Acting pro se, Relator has filed a petition for writ of mandamus to compel Respondent to rule on his post-conviction application for writ of habeas corpus under Article 11.07 of the code of criminal procedure.<sup>1</sup>

Article 11.07 is the exclusive procedure available to an applicant seeking relief from a felony judgment imposing a penalty other than death. See TEX. CODE CRIM. PROC. ANN. art. 11.07 §§ 1, 5 (West 2005). Because the court of criminal appeals has exclusive Article 11.07 jurisdiction, an intermediate appellate court has no jurisdiction to rule on matters pertaining to a pending Article 11.07 application. See *Padieu v. Court of Appeals of Tex., Fifth Dist.*, 392 S.W.3d 115, 117–18 (Tex. Crim. App. 2013).

Given that Article 11.07 applies to Relator’s pending application for habeas relief, and this Court has no jurisdiction to rule on any matters pertaining to a pending Article 11.07 habeas application, we are without jurisdiction to reach the merits of Relator’s complaint. Accordingly, we *dismiss* Relator’s petition for writ of mandamus for *want of jurisdiction*. See TEX. CODE CRIM. PROC. ANN. art. 11.07 § 1; see also *Padieu*, 392 S.W.3d at 117–18; *In re Ward*, No. 12-15-00142-CR, 2015 WL 3505189 (Tex. App.—Tyler June 3, 2015, orig. proceeding) (mem. op., not designated for publication).

---

<sup>1</sup> Respondent is the Honorable Kerry L. Russell, judge of the 7th District Court in Smith County, Texas.

Opinion delivered September 29, 2017.

*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(DO NOT PUBLISH)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**

SEPTEMBER 29, 2017

NO. 12-17-00278-CR

**JODY FORD MCCREARY,**  
Relator  
V.

**HON. KERRY L. RUSSELL,**  
Respondent

---

---

**ORIGINAL PROCEEDING**

---

---

ON THIS DAY came to be heard the petition for writ of mandamus filed by Jody Ford McCreary; who is the relator in Cause No. 007-1110-10-N, pending on the docket of the 7th Judicial District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on September 13, 2017, and the same having been duly considered, because it is the opinion of this Court that it lacks jurisdiction, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **dismissed for want of jurisdiction.**

*By per curiam opinion.*  
*Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.*