

NO. 12-17-00287-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
MICHAEL KENNEDY, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

Michael Kennedy has filed a petition for writ of mandamus, in which he raises various post-conviction complaints regarding his felony conviction in trial court cause number 18,349. We dismiss the petition for want of jurisdiction.

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). This Court does not have authority to issue a writ as to complaints, such as those asserted by Relator, that may only be presented by a post-conviction habeas corpus proceeding. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991); *see also In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding). “To complain about any action, or inaction, of the convicting court, the applicant may seek mandamus relief from the Court of Criminal Appeals.” *In re Briscoe*, 230 S.W.3d 196, 196-97 (Tex. App.—Houston [14th Dist.] 2006, orig. proceeding).¹ Accordingly, we *dismiss* Relator’s petition for writ of mandamus for *want of jurisdiction*.

¹ On February 15, 2017, the Texas Court of Criminal Appeals issued an abuse of writ order against Relator, in which it found that he (1) filed seven applications regarding his conviction, (2) “continues to raise issues that have been presented and rejected in previous applications or that should have been presented in previous applications[.]” and (3) “[b]ecause of his repetitive claims, ... Applicant’s claims are barred from review under Article 11.07, § 4, and are waived and abandoned by his abuse of the writ.” *Ex Parte Kennedy*, No. WR-75,385-24 (Tex. Crim. App. Feb. 15, 2017). We also note that the filing of frivolous proceedings wastes scarce judicial and fiscal resources. *See*

Opinion delivered September 29, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

Ex parte Jones, 97 S.W.3d 586, 588 (Tex. Crim. App. 2003); *see also In re Lucas*, No. 09-14-00106-CR, 2014 WL 1285396 (Tex. App.—Beaumont Mar. 26, 2014, orig. proceeding) (mem. op., not designated for publication).



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

SEPTEMBER 29, 2017

NO. 12-17-00287-CR

IN RE: MICHAEL KENNEDY,
Relator

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Michael Kennedy; who is the relator in Cause No. 18349. Said petition for writ of mandamus having been filed herein on September 21, 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.