

**NO. 12-19-00022-CR**  
**IN THE COURT OF APPEALS**  
**TWELFTH COURT OF APPEALS DISTRICT**  
**TYLER, TEXAS**

*IN RE:* §  
*WILLIE L. RAY,* § *ORIGINAL PROCEEDING*  
*RELATOR* §

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

Relator, Willie Ray, filed this pro se original proceeding in which he challenges Respondent's failure to ensure that he had a fair and impartial jury trial when a juror fell asleep during trial.<sup>1</sup> He contends that his trial counsel alerted Respondent to the fact that one of the jurors was sleeping during trial, particularly while evidence was being presented and the jury charge was being read. Relator complains that Respondent failed to admonish the juror.

In September 2003, a jury convicted Relator of aggravated assault and assessed his punishment at forty-five years in prison. See *Ray v. State*, No. 12-03-00337-CR, 2004 WL 1795376 (Tex. App.—Tyler Aug. 11, 2004, pet. ref'd) (mem. op., not designated for publication). This Court affirmed the conviction.<sup>2</sup> See *id.* In this original proceeding, Relator now challenges his conviction by claiming that his constitutional rights were violated by a sleeping juror and Respondent's failure to address the matter. However, the sole method for a collateral attack on a felony conviction is through an application for a writ of habeas corpus. *In re Harrison*, 187 S.W.3d 199, 200 (Tex. App.—Texarkana 2006, orig. proceeding); see *Ater v.*

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<sup>1</sup> Respondent is the Honorable Kerry L. Russell, Judge of the 7th District Court in Smith County, Texas. The State of Texas is the Real Party in Interest.

<sup>2</sup> The court of criminal appeals granted Relator an opportunity to file an out of time petition for discretionary review. See *Ex parte Ray*, No. AP-75,328, 2006 WL 234901 (Tex. Crim. App. Feb. 1, 2006). The petition was subsequently refused. See *Ex parte Ray*, PD-0342-06 (Tex. Crim. App. June 1, 2006). Relator also filed other unsuccessful proceedings with the court of criminal appeals. See *Ex parte Ray*, No. WR-61,390-05, 2006 WL 234901 (Tex. Crim. App. Dec. 12, 2018); see also *Ex parte Ray*, No. WR-61,390-04, (Tex. Crim. App. Sept. 17, 2015).

*Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991); *see also* TEX. CODE CRIM. PROC. ANN. art 11.07 (West 2005). Accordingly, Relator’s petition for writ of mandamus is an improper collateral attack on his criminal conviction. *See In re Tutson*, No. 07-17-00405-CV, 2017 WL 5185124 at \*2 (Tex. App.—Amarillo Nov. 7, 2017, orig. proceeding) (mem. op.) (“a felony conviction is not subject to a collateral attack by means of a writ of mandamus”); *see also Harrison*, 187 S.W.3d at 200. We, therefore, *dismiss* Relator’s petition for writ of mandamus for *want of jurisdiction*.

Opinion delivered January 23, 2019.

*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**

JANUARY 23, 2019

NO. 12-19-00022-CR

**WILLIE L. RAY,**  
Relator  
V.

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

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**ORIGINAL PROCEEDING**

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ON THIS DAY came to be heard the petition for writ of mandamus filed by Willie L. Ray; who is the relator in Cause No. 007-0396-03-A. Said petition for writ of mandamus having been filed herein on January 16, 2019, 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.*