

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

In re Jody Levis Johnson

No. 05-22-01250-CV (Tex. App.—Dallas Dec. 2, 2022) · No. No. 05-22-01250-CV · Decided December 2, 2022

SUMMARY

The Fifth District Court of Appeals of Texas denied Jody Levis Johnson’s petition for writ of mandamus challenging the trial court’s dismissal of his petition for habeas relief under Texas Code of Criminal Procedure article 11.07. The court held that the petition failed to comply with Texas Rule of Appellate Procedure 52 and noted that only the Texas Court of Criminal Appeals has jurisdiction to grant article 11.07 habeas relief.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Erin A. Nowell; Justices Reichek; Goldstein
JURISDICTION	Texas
DECIDED	December 2, 2022
DOCKET	No. 05-22-01250-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding seeking a writ of mandamus challenging the trial court's dismissal of a petition for relief under Texas Code of Criminal Procedure article 11.07.
STANDARD OF REVIEW	Mandamus relief in a criminal case requires the relator to show that the trial court violated a ministerial duty and that the relator lacks an adequate remedy at law.
PRECEDENTIAL VALUE	Published
PARTIES	Jody Levis Johnson, Relator

TOPICS

- appellate procedure
- post-conviction relief
- habeas corpus
- criminal procedure
- standard of review

PRACTICE AREAS

- appellate procedure
- criminal procedure
- post-conviction relief
- habeas corpus
- mandamus

QUESTIONS PRESENTED

1. Whether the relator established entitlement to mandamus relief by showing a violation of a ministerial duty and the absence of an adequate remedy at law.
2. Whether the court of appeals could grant article 11.07 habeas relief.
3. Whether the mandamus petition complied with Texas Rule of Appellate Procedure 52.

HOLDINGS

1. A relator seeking mandamus relief in a criminal case must show that the trial court violated a ministerial duty and that the relator has no adequate remedy at law; Johnson failed to make that showing.
2. Only the Texas Court of Criminal Appeals has jurisdiction to grant habeas relief under Texas Code of Criminal Procedure article 11.07.

KEY QUOTATIONS

“To establish a right to mandamus relief in a criminal case, the relator must show that the trial court violated a ministerial duty and there is no adequate remedy at law.” (at 1)

“Because we conclude that relator failed to show his entitlement to mandamus relief, we deny the petition.”
(at 1)

FACTUAL BACKGROUND

Jody Levis Johnson sought article 11.07 habeas relief in the trial court. The trial court dismissed his petition. Johnson then filed an original petition for writ of mandamus in the Fifth District Court of Appeals, challenging that dismissal.

PROCEDURAL HISTORY

Relator filed a petition for writ of mandamus in the Court of Appeals, apparently challenging the 194th Judicial District Court's dismissal of his article 11.07 habeas petition. The court denied the mandamus petition because it failed to establish entitlement to mandamus relief, did not comply with Texas Rule of Appellate Procedure 52, and sought relief over which the court of appeals lacked jurisdiction.

DISPOSITION

writ_denied

CASES CITED

- In re State ex rel. Weeks, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding)
- Ater v. Eighth Court of Appeals, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding)

OPINION

PER CURIAM.

DENY and Opinion Filed December 2, 2022 In The Court of Appeals Fifth District of Texas at Dallas No. 05-22-01250-CV IN RE JODY LEVIS JOHNSON, Relator Original Proceeding from the 194th Judicial District Court Dallas County, Texas Trial Court Cause No. W94-53385-P MEMORANDUM OPINION Before Justices Reichek, Nowell, and Goldstein Opinion by Justice Nowell In his petition for writ of mandamus, relator appears to challenge the trial court's dismissal of his petition for article 11.07 habeas relief.

We deny the petition. To establish a right to mandamus relief in a criminal case, the relator must show that the trial court violated a ministerial duty and there is no adequate remedy at law. In re State ex rel. Weeks, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding).

Here, the mandamus petition does not comply with Rule 52 in numerous respects, and, in any event, only the Texas Court of Criminal Appeals has jurisdiction to grant article 11.07 habeas relief. See TEX. CODE CRIM. PROC. ANN. art. 11.07, §§ 3, 5; Ater v. Eighth Court of Appeals, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding).

Because we conclude that relator failed to show his entitlement to mandamus relief, we deny the petition. See TEX. R. APP. P. 52.8(a). 221250f.p05 /Erin A. Nowell// ERIN A. NOWELL JUSTICE –2–