

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
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4/18/2018

KENNEDY, MICHAEL ALLYN Tr. Ct. No. 29326-R

WR-75,385-55

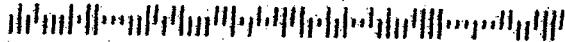
This Court has previously entered an order citing you for abuse of the writ of habeas corpus. The application for writ of habeas corpus filed by you in the 3rd District Court, received by this Court on 4/5/2018, does not satisfy the requirements for consideration set out in the order described above. Therefore, the Court will take no action on this writ.

Deana Williamson, Clerk

MICHAEL ALLYN KENNEDY
POLUNSKY UNIT - TDC # 1516203
3872 FM 350 S.
LIVINGSTON, TX 77351

Appendix-1

NAB 77351



5

Case No. 29326-R

(The Clerk of the convicting court will fill this line in.) **FILED FOR RECORD**

At 11:00 o'clock AM

IN THE COURT OF CRIMINAL APPEALS OF TEXAS FEB 02 2018

APPLICATION FOR A WRIT OF HABEAS CORPUS **JANICE STAPLES**
SEEKING RELIEF FROM FINAL FELONY CONVICTION District Clerk, Anderson County, TX
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07 Dep.

NAME: MICHAEL A. KENNEDY

DATE OF BIRTH: 12-12-1964

PLACE OF CONFINEMENT: Allen B. Polovske

TDCJ-CID NUMBER: 1516203 SID NUMBER: UN Known

(1) This application concerns (check all that apply):

a conviction parole
 a sentence mandatory supervision
 time credit out-of-time appeal or petition for
discretionary review

(2) What district court entered the judgment of the conviction you want relief from?
(Include the court number and county.)

3RD JUDICIAL DISTRICT COURT Anderson
County, Texas

(3) What was the case number in the trial court?

29326

(4) What was the name of the trial judge?

MARK A. Culhoun

(5) Were you represented by counsel? If yes, provide the attorney's name:

None

(6) What was the date that the judgment was entered?

1-26-2011

(7) For what offense were you convicted and what was the sentence?

None Shafed

(8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each court?

None Shafed

(9) What was the plea you entered? (Check one.)

guilty-open plea guilty-plea bargain
 not guilty *nolo contendere/no contest*

If you entered different pleas to counts in a multi-count indictment, please explain:

None Shafed

(10) What kind of trial did you have?

no jury jury for guilt and punishment
 jury for guilt, judge for punishment

(11) Did you testify at trial? If yes, at what phase of the trial did you testify?

yes All Stages

(12) Did you appeal from the judgment of conviction?

yes

no

If you did appeal, answer the following questions:

(A) What court of appeals did you appeal to? 12th Court of Appeals

(B) What was the case number? 12-08-00246-CR

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name: None

(D) What was the decision and the date of the decision? December 9, 2012

(13) Did you file a petition for discretionary review in the Court of Criminal Appeals?

yes

no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? Unknown

(B) What was the decision and the date of the decision? Unknown

(14) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *this conviction*?

yes

no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? WR-75-385-43-9

(B) What was the decision and the date of the decision? UnKnowned

(C) Please identify the reason that the current claims were not presented and could not have been presented on your previous application.

The Trial Court, 12th Court of Appeals
Stated's PROSECUTOR and Texas Court of Appeals
Appeals Court and does not show no
Indictment OR any notice to the
Court charges

(15) Do you currently have any petition or appeal pending in any other state or federal court?

yes

no

If you answered yes, please provide the name of the court and the case number:

None

(16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

yes

no

If you answered yes, answer the following questions:

(A) What date did you present the claim? None

(B) Did you receive a decision and, if yes, what was the date of the decision?

None

If you answered no, please explain why you have not submitted your claim:

(17) Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.* If you have more than four grounds, use pages 14 and 15 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.

You may include with the form a memorandum of law if you want to present legal authorities, but the Court will *not* consider grounds for relief set out in a memorandum of law that were not raised on the form. The citations and argument must be in a memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum.

GROUND ONE:

NO INDICTMENT OR NO OFFENSE
Charges on Trial Court Records

FACTS SUPPORTING GROUND ONE:

The Texas Court of Criminal Appeals
have no indictment or any rendering
of and indictment the Texas
Commission of Judicial Conduct
Clerk's Office shows the Texas Court of
Criminal Appeals and the 12th
Court of Appeals along with the
trial Court 17 violations and that
the Courts have acted in violations
without an indictment or an
Court Reporter record of an
indictment to falsely impersonate

Applicant and to in Silver & the
Applicants without justifications
OR Reasons of a crime OR
Offense committed OR an indictment
Showing an offense."

WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT
RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.

VERIFICATION

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

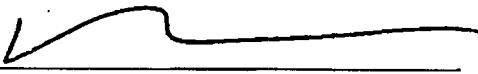
A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

OATH BEFORE A NOTARY PUBLIC

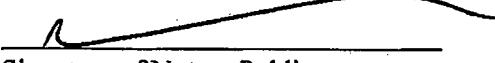
STATE OF TEXAS

COUNTY OF POLK

Michael Kinnard, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."


Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS 18 DAY OF February, 20 18.


Signature of Notary Public

PETITIONER'S INFORMATION

Petitioner's printed name: Michael Kennedy #1868803

State bar number, if applicable: None

Address: 3872 FM 350 South
Livingston TX 77357

Telephone: N 7 7 7

Fax: 505 247-1010

INMATE'S DECLARATION

I, Mr. Chad Kenneth, am the applicant / petitioner (circle one) and
being presently incarcerated in Alton B. Polkwork, declare under penalty of
perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on 1-28-, 2018

Signature of Applicant / Petitioner (circle one)

PETITIONER'S INFORMATION

Petitioner's printed name: Michael Kennedy

Address: F156203

Polynesian Univ

3872 pm 350 South

Telephone: Livingston 7477381 None

Fax: None

Signed on 1-28, 2015


Signature of Petitioner

NO. 12-17-00339-CR

NO. 12-17-00340-CR

NO. 12-17-00341-CR

IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

EX PARTE:

§

MICHAEL KENNEDY,

§

ORIGINAL PROCEEDING

RELATOR

§

*MEMORANDUM OPINION
PER CURIAM*

Relator, Michael Kennedy, has filed two petitions for writ of habeas corpus and a motion for “prohibited and injunction.” In cause number 12-17-00339-CR, he contends that there was no judgment or sentence in trial court cause number 18,349. In cause number 12-17-00340-CR, he argues that there was no waiver of a jury trial in trial court cause number 19061. Finally, in cause number 12-17-00341-CR¹, he accuses this Court of falsifying an indictment in trial court cause number 29326.

Relator has not provided the “clear and concise argument” and “appropriate citations to authorities” required by Texas Rule of Appellate Procedure 52.3(h). *See* TEX. R. APP. P. 52.3(h). Additionally, this Court has no authority to issue writs regarding complaints that may only be raised by a post-conviction habeas corpus proceeding filed with the court of criminal appeals. *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); TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2006).¹ Relator’s repeated filing of frivolous

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[,]”

proceedings wastes scarce judicial and fiscal resources.² See *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). We *dismiss* the petitions for writ of habeas corpus and the motion for “prohibited and injunction” for *want of jurisdiction*.

Opinion delivered November 8, 2017.

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

(DO NOT PUBLISH)

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).

² On its own initiative, an appellate court may—after notice and a reasonable opportunity to respond—impose just sanctions on a party who is not acting in good faith as indicated by (1) filing a petition that is clearly groundless; (2) grossly misstating or omitting an obviously important and material fact in the petition or response; or (3) filing an appendix or record that is clearly misleading because of the omission of obviously important and material evidence or documents. TEX. R. APP. P. 52.11; see also *In re Altschul*, 146 S.W.3d 754, 755 (Tex. App.—Beaumont 2004, orig. proceeding).

NOS. 12-17-00367-CR

12-17-00368-CR

12-17-00369-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE: §

MICHAEL A. KENNEDY, § **ORIGINAL PROCEEDING**

RELATOR §

MEMORANDUM OPINION
PER CURIAM

Michael A. Kennedy has filed three original proceedings with this Court. In cause number 12-17-00367-CR, pertaining to trial court cause number 19061, he contends he received no notice of trial. In cause number 12-17-00368-CR, pertaining to trial court cause number 18,349, he complains that he was denied time to prepare for trial and that his conviction was affirmed without a judgment or sentence. In cause number 12-17-00369-CR, pertaining to trial court cause number 29326, he complains he was convicted without a charging instrument, arraignment, notice of trial date, or offense date. Relator threatens to file "millions of writs" with this Court.

On November 27, 2017, regarding cause numbers 12-17-00368-CR and 12-17-00369-CR, we notified Relator that his petitions failed to comply with Texas Rules of Appellate Procedure 52.3 and 52.7. We informed Appellant that the proceeding would be referred to the Court for dismissal unless he provided a corrected, amended petition on or before December 11. In cause number 12-17-00367-CR, we notified Relator that his petition failed to comply with Rules 52.3 and 52.7, and gave Relator until December 7 to file an amended petition. We

received what appeared to be supplemental petitions, which again failed to comply with Rules 52.3 and 52.7.

Additionally, Relator's petitions do not contain "clear and concise arguments" or "appropriate citations to authorities" required by the rules of appellate procedure. *See* TEX. R. APP. P. 52.3(h). Relator's repeated filing of such frivolous proceedings wastes scarce judicial and fiscal resources. *See 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). In fact, 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) "continues to raise issues that have been presented and rejected in previous applications or that should have been presented in previous applications[,]"; and (2) "[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). Although the rules of appellate procedure allow an appellate court to impose just sanctions on a party who is not acting in good faith as indicated by (1) filing a petition that is clearly groundless; (2) grossly misstating or omitting an obviously important and material fact in the petition or response; or (3) filing an appendix or record that is clearly misleading because of the omission of obviously important and material evidence or documents, this Court has declined to impose such sanctions on Relator as of this date. TEX. R. APP. P. 52.11; *see also In re Altschul*, 146 S.W.3d 754, 755 (Tex. App.—Beaumont 2004, orig. proceeding).

We recognize Relator's contentions that he was improperly convicted for various reasons and his dissatisfaction with both the trial and appellate proceedings that occurred regarding his convictions. However, Relator's convictions are final. *See Kennedy v. State*, No. 12-11-00041-CR, 2012 WL 3201924, at *8 (Tex. App.—Tyler Aug. 8, 2012, pet. ref'd) (mem. op., not designated for publication) (affirming judgment on punishment in cause number 29326); *see also Kennedy v. State*, No. 12-08-00246-CR, 2009 WL 4829989, at *3-4 (Tex. App.—Tyler Dec. 16, 2009, pet. stricken) (mem. op., not designated for publication) (affirming judgment of conviction in cause number 29326); *Kennedy v. State*, No. 12-86-00248-CR (Tex. App.—Tyler Feb. 25, 1988, no pet.) (not designated for publication) (affirming conviction in cause number 19061); *Kennedy v. State*, 12-84-00138-CR (Tex. App.—Tyler Apr. 18, 1985, no pet.) (not

designated for publication) (affirming conviction in cause number 18,349). As this Court has explained to Relator in numerous previous proceedings, Article 11.07 is the only 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)*. Thus, due to a lack of jurisdiction conferred upon us by the Legislature, we simply cannot address Relator's complaints. *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).

Accordingly, for all the above reasons, we *deny* the petitions for writ of mandamus. All pending motions are *overruled as moot*.¹

Opinion delivered December 21, 2017.

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

(DO NOT PUBLISH)

¹ One such motion is a motion to recuse the justices of this Court. Relator has filed multiple such motions in recent months. He claims to have filed a civil lawsuit against this Court in Anderson County. We first note that Relator's motion fails to comply with the applicable rule regarding the contents of motions to recuse. *See TEX. R. CIV. P. 18a*. Additionally, the clerk of this Court contacted Anderson County and has been unable to verify that a pending lawsuit exists. Even so, the applicable rules governing recusal apply to judges in which the case is pending. *See TEX. R. APP. P. 16.3*. Until an appeal from a lawsuit is properly pending before this Court, there is nothing from which the Court may recuse itself. *See id.*