

5/15/2024

TALLEY, WILLIAM MICHAEL Tr. Ct. No. 19238-A

WR-95,509-01

This is to advise that the Court has denied without written order the application for writ of habeas corpus.

Deana Williamson, Clerk

WILLIAM MICHAEL TALLEY
COLE UNIT - TDC # 2426137
3801 SILO ROAD
BONHAM, TX 75418

6/6/2024

TALLEY, WILLIAM MICHAEL Tr. Ct. No. **19238-A**

WR-95,509-01

Pursuant to Texas Rules of Appellate Procedure, Rule 79.2 (d), applicant's Motion for Reconsideration/Rehearing has been dismissed.

Deana Williamson, Clerk

WILLIAM MICHAEL TALLEY
COLE UNIT - TDC # 2426137
3801 SILO ROAD
BONHAM, TX 75418



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

OCTOBER 31, 2023

NO. 12-23-00160-CR

WILLIAM MICHAEL TALLEY,
Relator
V.

HON. JERALD (DEAN) FOWLER II,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by William Michael Talley; who is the relator in appellate cause number 12-23-00160-CR and the defendant in trial court cause number 19238, formerly pending on the docket of the 115th Judicial District Court of Upshur County, Texas. Said petition for writ of mandamus having been filed herein on June 14, 2023, and the same having been duly considered, because it is the opinion of this Court that it lacks jurisdiction and the writ should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **denied in part and dismissed in part for want of jurisdiction.**

By per curiam opinion.

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

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NO. 12-23-00160-CR
 IN THE COURT OF APPEALS
 TWELFTH COURT OF APPEALS DISTRICT
 TYLER, TEXAS

<i>IN RE:</i>	§	
<i>WILLIAM MICHAEL TALLEY,</i>	§	<i>ORIGINAL PROCEEDING</i>
<i>RELATOR</i>	§	

**MEMORANDUM OPINION
 PER CURIAM**

William Michael Talley, acting pro se, filed this original proceeding to complain of Respondent's failure to rule on his motion to withdraw plea of guilt and failure to recuse himself from the proceedings against Relator, as well as his counsel's failure to argue for the suppression of certain evidence.¹ He further complains that his plea was coerced, he did not fully understand the consequences of his plea, and treatment is more appropriate than punishment.

On June 14, 2023, the Clerk of this Court informed Relator that his petition fails to comply with appellate Rules 9.5, 52.3(a)-(c), (h), (k)(1)(C) and 52.7. *See* TEX. R. APP. P. 9.5 (service); *see also* TEX. R. APP. P. 52.3 (contents of petition); TEX. R. APP. P. 52.7 (record). The notice warned that the petition would be referred to this Court for dismissal unless Relator provided an amended petition and the record on or before June 26. We granted Relator's request for an extension to August 25 and a subsequent request to October 24. Relator filed two supplements, an additional appendix, and an amended petition. He did not file a record in accordance with Rule 52.7.

¹ Respondent is the Honorable Jerald (Dean) Fowler, II, Judge of the 115th District Court in Upshur County, Texas. The State of Texas is the Real Party in Interest.

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 9.

Relator provides (1) a file marked copy of a letter to the Upshur County District Clerk's Office, in which he inquired about his motion to withdraw guilty plea, and (2) a file marked copy of a notice of intent to file a writ of mandamus regarding the failure to rule on his motion. A relator's statement that a document was properly filed with the clerk is an insufficient basis from which to reasonably infer that the trial court had notice of that document and the need to act on it. *See In re Blakeney*, 254 S.W.3d 659, 662 (Tex. App.—Texarkana 2008, orig. proceeding) (trial court not required to consider motion not called to its attention; even showing motion was filed with clerk does not prove motion was brought to trial court's attention or was presented to trial court with request for ruling); *see also Chavez*, 62 S.W.3d at 228 (clerk's knowledge not imputed to trial court). Even showing that a motion was filed with clerk does not prove the motion was brought to the trial court's attention or was presented to the trial court with a request for a ruling; a clerk's knowledge is not imputed to the trial court. *Id.*; *Chavez*, 62 S.W.3d at 228. Relator does not demonstrate any steps taken to ensure that the trial court was afforded or had notice of his motion. *See Chavez*, 62 S.W.3d at 228. Under these circumstances, Relator has not established his entitlement to mandamus relief. *See In re Wheeler*, No. 12-18-00127-CR, 2018 WL 2440464, at *1-2 (Tex. App.—Tyler May 31, 2018, orig. proceeding) (mem. op., not designated for publication) (denying mandamus relief when relator failed to show that he called motion for DNA testing to respondent's attention).

And with respect to Relator's other contentions, the record indicates that sentence was imposed on November 28, 2022 for the felony offense of possession of a controlled substance with intent to deliver, habitual offender. 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. 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). To the extent Relator raises challenges related to his conviction, Relator's petition for writ of mandamus is an improper collateral attack on his criminal conviction. *See In re Ray*, No. 12-19-00022-CR, 2019 WL 302666, at *1 (Tex. App.—Tyler Jan. 23, 2019, orig. proceeding) (per curiam) (mem. op., not designated for publication) (dismissing for want of jurisdiction mandamus petition that improperly collaterally attacked criminal conviction); *see also In re Tutson*, No. 07-17-00405-CV, 2017 WL 5185124 at *2 (Tex. App.—Amarillo Nov. 7,

**Additional material
from this filing is
available in the
Clerk's Office.**