

Dismissed and Opinion filed March 15, 2001.

In The
Fourteenth Court of Appeals

NO. 14-01-00232-CR

AARON DEWAYNE FLETCHER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 719,486**

MEMORANDUM OPINION

On September 24, 1998, this court issued an unpublished opinion, under our Appeal No. 14-96-01158-CR, affirming appellant's conviction for aggravated assault. On February 3, 1999, the Court of Criminal Appeals refused appellant's petition for discretionary review. On December 27, 2000, appellant filed with the trial court a motion to obtain a free duplicate copy of the clerk's and reporters records in that case. The motion is stamped "Denied" and signed by the trial judge. On December 29, 2000, the Harris County District Clerk's office notified appellant that the trial court had denied his request. On January 16, 2001, appellant filed a pro se notice of appeal.

On February 27, 2001, the clerk's record in this appeal was filed with this court. The record does not contain an appealable order. This court does not have jurisdiction over interlocutory orders unless jurisdiction has been expressly granted to it by law. *See Ex parte Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991). The narrow exceptions to this rule do not apply here, and we have found no statute that would authorize this court to address an appeal of an order denying a free copy of a record after appellant's conviction has been affirmed. Therefore, this court is without jurisdiction over this appeal.

Included in the record before this court is appellant's application to proceed in forma pauperis, which complains that the district clerk abused his discretion in denying appellant a free copy of the record. Even if we were to construe appellant's request as a petition for a writ of mandamus to compel the district clerk to provide a free copy of the record, we could grant no relief. Our mandamus jurisdiction is quite limited. By statutory grant, courts of appeals have authority to issue writs of mandamus against a district court judge or county court judge in the court of appeals district, and all writs necessary to enforce its jurisdiction. TEX. GOV'T CODE ANN. § 22.221(a), (b) (Vernon 1988). Clearly, a district clerk is not a judge. Thus, in order for a district clerk to fall within our jurisdictional reach, it must be shown that the issuance of the writ of mandamus is necessary to enforce our jurisdiction. *See Click v. Tyra*, 867 S.W.2d 406, 407 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding). The relief appellant seeks, the trial record for preparation of a writ of habeas corpus to attack his felony conviction, does not affect our jurisdiction. Courts of appeals have no jurisdiction over post-conviction writs of habeas corpus in felony cases. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07, § 3 (Vernon Supp. 2000); *Hoang v. State*, 872 S.W.2d 694, 697 (Tex. Crim. App. 1993). Post-conviction writs of habeas corpus are to be filed in the trial court in which the conviction was obtained, made returnable to the Court of Criminal Appeals. TEX. CODE CRIM. PROC. ANN. art. 11.07, § 3 (Vernon Supp. 2000). Thus, because the district clerk's alleged refusal to provide appellant with a free copy of the record does not affect our jurisdiction, this court's exercise of mandamus authority would be inappropriate.

See Click, 867 S.W.2d at 407. Moreover, an indigent criminal defendant is not entitled – either as a matter of equal protection or of due process – to obtain a free record in order to assist in preparation of a petition for writ of habeas corpus absent a showing that the habeas corpus action is not frivolous and there is a specific need for the trial records which are sought. *Escobar v. State*, 880 S.W.2d 782, 783 (Tex. App.—Houston [1st Dist.] 1993, no pet.). The record before us does not demonstrate that these prerequisites have been met.

This court lacks jurisdiction to grant the requested relief. Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed March 15, 2001.

Panel consists of Senior Chief Justice Murphy, Justices Edelman and Frost.¹

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¹ Senior Chief Justice Paul C. Murphy sitting by assignment.