Opinion filed July 14, 2011



In The

Eleventh Court of Appeals

No. 11-11-00172-CR

IN RE ERNEST PATRICK LEWALLEN

Original Proceeding

M E M O R A N D U M O P I N I O N

Relator, Ernest Patrick Lewallen, seeks release from his confinement in the Taylor County Jail. He complains that the trial court has refused to release him on a personal recognizance bond pending trial despite his proven indigence. Relator has designated his request for relief as an "Application for Writ of Mandamus." However, it is the substance of a document that governs, not the title. *Ex parte Caldwell*, 58 S.W.3d 127, 130 (Tex. Crim. App. 2000). Relator is, in effect, seeking pretrial habeas relief. Therefore, we construe the filed document as an application for a pretrial writ of habeas corpus.

Courts of appeals do not have original habeas corpus jurisdiction in criminal law matters. *Dodson v. State*, 988 S.W.2d 833, 835 (Tex. App.—San Antonio 1999, no pet.); *Ex parte Hawkins*, 885 S.W.2d 586, 588 (Tex. App.—El Paso 1994, no pet.). In such matters, their jurisdiction is appellate only. *Dodson*, 988 S.W.2d at 835. Because relator seeks habeas relief in an original proceeding, we are without jurisdiction to consider his application.

Accordingly, we dismiss the application for want of jurisdiction.

PER CURIAM

July 14, 2011

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel[1] consists of: Wright, C.J.,
McCall, J., and Hill, J.[2]

[1]Rick Strange, Justice, resigned effective April 17, 2011. The justice position is vacant pending appointment of a successor by the governor.

[2]John G. Hill, Former Justice, Court of Appeals, 2nd District of Texas at Fort Worth, sitting by assignment.