

YEAR 2004 CASE SUMMARIES

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Court explains when mandamus and habeas corpus can be used in juvenile cases [In re Debrow] (04-4-20).

On August 11, 2004, the San Antonio Court of Appeals denied a writ of mandamus directed at a prosecuting attorney on the ground it lacked jurisdiction to issue the writ and denied the writ against the trial court on the ground it had already ruled on the underlying habeas petition.

04-4-20. In re Debrow, UNPUBLISHED, No. 04-04-00424-CV, 2004 WL 2612533, 2004 Tex.App.Lexis ____ (Tex.App.—San Antonio 8/11/04) Texas Juvenile Law (6th Ed. 2004).

Facts: In January 2001, relator filed a petition for writ of mandamus, complaining of the trial court's failure to rule on his application for writ of habeas corpus, which he filed pursuant to Texas Code of Criminal Procedure 11.07. In a February 2001 opinion, a panel of this court held that a district judge is not required to consider an application for a writ of habeas corpus under article 11.07 filed by a juvenile not certified to stand trial as an adult; therefore relator's petition was denied. See In re Debrow, No. 04-01-00095-CV, 2001 WL 121103, *1 (Tex.App.—San Antonio Feb. 14, 2001) (per curiam) (not designated for publication).

In April 2004, relator filed a second petition for writ of mandamus, asking this court to order the District Clerk of Bexar County to forward his application for writ of habeas corpus to the Court of Criminal Appeals. In a May 2004 opinion, a panel of this court determined we had no mandamus jurisdiction over district clerks unless it is shown that issuance of the writ is necessary to enforce our jurisdiction; therefore, relator's petition was dismissed for lack of jurisdiction. See In re Debrow, No. 04-04-00241-CV, 2004 WL 1055080, *1 (Tex.App.—San Antonio May 12, 2004) (per curiam) (not designated for publication).

On June 15, 2004, relator filed this, his third, petition for writ of mandamus, complaining of the State's failure to file a response to his application for writ of habeas corpus and the trial court's refusal to rule on his application.

Held: Mandamus denied.

Opinion Text: This court is empowered to issue writs of mandamus against judges of district courts, but may not issue writs against other parties unless necessary to enforce our jurisdiction. Tex. Gov't Code Ann. § 22.221(a)-(b) (Vernon 2004). Because relator does not allege that the District Attorney and the unidentified State Prosecuting Attorneys are interfering with this court's jurisdiction, we must DENY relator's requested relief as to those entities.

On the other hand, this court is empowered to mandamus a district court to consider and rule on a pending application for writ of habeas corpus if (1) relator has asked the trial court to rule on his application and (2) the trial court either refused to rule or failed to rule on the application within what constitutes a reasonable time, considering all the surrounding circumstances. See Barnes v. State, 832 S.W.2d 424, 426-7 (Tex.App.—Houston [1st Dist.] 1992, no writ) (per curiam); Von Kolb v. Koehler, 609 S.W.2d 654, 655-56 (Tex.App.—

El Paso 1980, no writ). Relator's complaint, which underlies his continued attempt to have his application for writ of habeas corpus considered, is his contention that he was prevented from filing a timely notice of appeal from his juvenile adjudication because he received ineffective assistance of counsel. [FN2] Relator has attempted to have an application for writ of habeas corpus heard since at least 2000. [FN3] The application that is the subject of this petition for writ of mandamus was filed in March 2002. [FN4] Accordingly, because this court was of the tentative opinion that a serious question concerning the relief requested required further consideration, we requested a response from the respondent.

FN2. Relator's direct appeal from his juvenile adjudication was dismissed for lack of jurisdiction on July 8, 1992. See *In the Matter of E.C.D.*, No. 04-92-00230-CV (Tex.App. San Antonio July 8, 1992) (per curiam) (not designated for publication).

FN3. In his petition for writ of mandamus, relator contends he has made numerous attempts to contact the trial court about his pending application. He has provided this court with a copy of a July 18, 2000 letter from the staff attorney for the Bexar County Civil District Courts, in which she informs relator that the State is not required to respond to his application for writ of habeas corpus within any certain time period.

FN4. Relator's March 2002 application asserts his right to apply for a writ of habeas corpus under Article V, section 8 of the Texas Constitution. A juvenile is entitled to file an application for a writ of habeas corpus in the appropriate court. Tex. Fam.Code Ann. § 56.01(o) (Vernon 2002); *Ex parte Valle*, 104 S.W.3d 888, 890 (Tex.Crim.App.2003). Article V, section 8 of the Texas Constitution authorizes Texas district courts to grant writs of habeas corpus. *Ex parte Hargett*, 819 S.W. 2d 866 867 (Tex.Crim.App.1991).

On July 14, 2004, respondent filed her response in which she explained as follows:

[Relator's] writ was originally sent to the District Clerk's Office ... to be filed in the 73rd District Court[,] which is the court of origin in this matter. It appears to Respondent, the 186th District Court, that the District Clerk's Office assigned this case to the 186th District Court, rather than the 73rd District Court.

...

When this matter was finally brought to the attention of Respondent, the 186th District Court, the court denied [relator's] writ, based on the position that the 186th District Court has no connection with [relator's] case, other than the arbitrary assignment of the writ to this court after it was originally filed in the District Clerk's Office in March of 2002.

Attached to respondent's response is a copy of the court's July 8, 2004 "Order Denying Writ of Habeas Corpus."

Because the trial court has now ruled on relator's application for writ of habeas corpus, we DENY his petition for writ of mandamus as moot, without prejudice to relator's right to re-file his application in the 73rd Judicial District Court.