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A Guide To Article 11.07 Writs of Habeas Corpus & Other State Writs

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**A GUIDE TO ARTICLE 11.07
WRITS OF HABEAS CORPUS AND OTHER STATE WRITS**

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A GUIDE TO ART. 11.07 WRITS OF HABEAS CORPUS AND OTHER STATE WRITS

I. Introduction

This paper is designed to provide you with information about habeas corpus applications challenging final felony convictions under authority of Article 11.07 of the Texas Code of Criminal Procedure. The paper also briefly covers some of the other extraordinary writs commonly filed at the Court of Criminal Appeals. For most criminal lawyers, this is a small part of their overall practice, but I hope the paper provides some useful background and helpful guidance for practitioners litigating Article 11.07 habeas applications¹ filed throughout our State, as well as original habeas applications, mandamus applications, prohibition applications, and certiorari petitions submitted in the Court of Criminal Appeals.

II. Staff at the Court

The staff at the Court² is divided into three sections:

- A. Petitions for Discretionary Review;
- B. Capital Appeals and Death Penalty Habeas;
- C. Post-Conviction Writs (Non-death penalty)

The staff in the post-conviction writs section mainly works on Article 11.07 habeas applications, but we also have a significant docket of original writs of habeas corpus, mandamus, and other extraordinary writs. The mandamus docket comprises most of our non-11.07 cases. When fully staffed, the writ section consists of seven lawyers including former prosecutors, defense lawyers, and appellate court staff attorneys.

III. Numbers

Post-conviction writs make up the largest number of cases ruled on by the Court.³ Here are some representative numbers from Fiscal Year 2018:

- A. 11.07, New Filings - 3,439 applications;
- B. 11.07, Disposed - 3,574 applications;
- C. 11.07, Back from Remand - 428 applications;
- D. Cert. Petitions, New Filings - 6 applications;

¹ This paper will frequently refer to these simply as 11.07, 11.07 writs, or 11.07 applications.

² In this paper, “the Court” almost always means “the Court of Criminal Appeals.”

³ The Court’s caseload primarily consists of mandatory matters. This includes review of applications for post-conviction habeas corpus relief in felony cases (capital and non-capital), original proceedings, and direct appeals. Mandatory matters routinely comprise around 80% of the new cases added and 11.07 applications typically account for about 80% of that number.

- E. Original Habeas, New Filings - 73 applications;
- F. Original Habeas, Back from Remand - 1 application;
- G. Mandamus, New Filings - 485 applications;
- H. Mandamus, Back from Remand - 114 applications;
- I. Prohibition, New Filings - 12 applications;
- J. Prohibition, Back from Remand - 1 application;
- K. Procedendo, New Filings - 4 applications.

That is a lot of paper! In FY 2018, the Judges, staff, and clerks at the Court handled thousands of 11.07 and non-capital original applications. This is in addition to the voluminous motions,⁴ correspondence, and other filings that must be processed by the Court on a daily basis.

IV. 11.07 – THE STATUTE

Habeas corpus applications are generally governed by Chapter 11 of the Texas Code of Criminal Procedure. Article 11.01 defines the writ as follows:

The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such a person, at a time and place named in the writ, and show why he is held in custody or under restraint.

There are several different kinds of habeas writs provided for by Chapter 11.

- **Article 11.071 applications.** Final felony convictions that resulted in a death sentence.
- **Article 11.072 applications.** Felony or misdemeanor cases in which an applicant seeks relief from a judgment ordering community supervision.
- **Article 11.08 applications.** For applicants who are confined on a felony charge after indictment, but before trial.
- **Article 11.09 applications.** For applicants who are confined on misdemeanor charges, either pre- or post-conviction.
- **Article 11.07 applications.** For applicants challenging a felony judgment imposing a penalty other than death. For practitioners, the most important provisions to remember when dealing with this section are:

Where the application is filed: Section 3(b) says that an application must be filed with the clerk of the court in which the

⁴ In FY 2018, the Court received 3,105 motions of various kinds. 326 were motions to reconsider decisions made on habeas corpus applications and other extraordinary writs.

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