

Affirmed and Opinion filed October 28, 1999.



In The

Fourteenth Court of Appeals

NO. 14-99-00808-CR

RICHARD WRIGHT, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 29,888**

O P I N I O N

Richard Wright, Jr. (Appellant) appeals from the trial court's habeas corpus judgment. Appellant was indicted for the felony offense of driving while intoxicated. Appellant filed a pre-trial application for writ of habeas corpus, contending that his indictment should be dismissed because the District Attorney of Fort Bend County maintains a policy that requires defense counsel to formally waive the filing of discovery motions in order for defense counsel to have access to the prosecutor's file. He asserts that this policy violates his due process rights. The trial court denied Appellant's requested relief because it found that "an

adequate remedy is available in a mandamus action against the District Attorney of Fort Bend County” On appeal, Appellant contends that the trial court erred in making that finding. We affirm.

STANDARD OF REVIEW

The trial court’s ruling in a habeas corpus proceeding should not be overturned absent a clear abuse of discretion. *Brashear v. State*, 985 S.W.2d 474, 476 (Tex. App.–Houston [1st Dist.] 1998, pet. ref’d). Whether discretion was so abused depends upon whether the trial court acted without reference to any guiding rules or principles. *Id.* In determining this, we view the evidence in the light most favorable to the trial court’s ruling. *Id.*

DISCUSSION

Appellant maintains that the District Attorney’s policy of requiring defense counsel to formally waive the filing of discovery motions in order for defense counsel to have open access to the prosecutor’s file violates his due process rights.

Habeas corpus is an extraordinary remedy that should not be used as a substitute for an appeal. *Ex parte Culver*, 932 S.W.2d 207, 210 (Tex. App.–El Paso 1996, pet. ref’d). Thus, an application for pre-trial writ of habeas corpus should not be entertained where there is an adequate remedy by appeal after final judgment. *Id.* Because of the existence of an adequate remedy by appeal, a defendant may not use pre-trial habeas corpus to assert his constitutional rights to due process. *Ex parte Culver*, 932 S.W.2d at 210; *Ex parte Gonzales*, 667 S.W.2d 932, 935 (Tex. App.–Austin 1984, pet. ref’d).

Although Appellant’s due process challenge is not cognizable in a pre-trial habeas corpus proceeding, we nevertheless retain jurisdiction over his appeal. “Certain claims may not be cognizable on habeas corpus, i.e., they may not be proper grounds for habeas corpus relief. However, if the district court denies relief, regardless of the underlying claims for the relief sought, the applicant may appeal.” *Ex parte Gutierrez*, 989 S.W.2d 55, 56 (Tex. App.–San Antonio 1998, no pet.) (quoting *Ex parte McCullough*, 966 S.W.2d 529, 531 (Tex. Crim. App. 1998)). If we conclude the grounds on appeal are not cognizable, then we must affirm the trial court’s denial of habeas corpus relief. *Id.*

We conclude that Appellant may not utilize pre-trial habeas corpus to raise his claim based upon due process because it may be adequately addressed on direct appeal in the event he is convicted. *See Ex parte Culver*, 932 S.W.2d at 210. Point of error overruled.

The habeas corpus judgment is affirmed.

PER CURIAM

Judgment rendered and Opinion filed October 28, 1999.

Panel consists of Justices Yates, Fowler, and Frost.

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