



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-82,597-03, NO. WR-82,597-04, and
NO. WR-82,597-05**

IN RE MICHAEL JEFFCOAT, Relator

**ON RELATOR'S PETITION FOR ORIGINAL WRITS OF HABEAS CORPUS,
CERTIORARI, AND MANDAMUS
CAUSE NO. 13-0211-CC1 IN THE COUNTY COURT AT LAW NO. 1
WILLIAMSON COUNTY**

RICHARDSON, J., delivered the opinion of the Court in which KELLER, P.J., and HERVEY, ALCALA, YEARY, NEWELL, KEEL, and WALKER, JJ. joined. KEASLER, J., concurred in the result.

O P I N I O N

On July 13, 2016, Relator, Michael Jeffcoat, filed with this Court a Petition for Original Writs of Habeas Corpus, Certiorari, and Mandamus. Relator asks this Court to compel the Third Court of Appeals to consider and rule upon the Motion for Rehearing he filed with the Third Court of Appeals on July 5, 2016. We will treat Relator's request as one seeking mandamus relief.¹ We hold that the Third Court of Appeals did not have a

¹ Our Court has long recognized the ability to consolidate applications brought before this Court, *Ex parte Bell*, 9 S.W.2d 1113 (Tex. Crim. App. 1928), and to address the substance of the relief

ministerial duty to rule on Relator’s Motion for Rehearing. We dismiss Relator’s petition for original writs of habeas corpus (WR-82,597-03) and certiorari (WR-82,597-04), and we deny his petition for mandamus relief (WR-82,597-05).

Background

On May 10, 2005, Relator was convicted of a Class C misdemeanor in County Court at Law No. 1 in Williamson County.² Eight years later, on February 13, 2013, Relator filed a writ of habeas corpus in the trial court pursuant to Articles 11.05 and 11.09 of the Texas Code of Criminal Procedure, as well as Article V, § 8 of the Texas Constitution, seeking relief from his conviction.³ The trial court denied Relator’s writ application. He appealed, and the Third Court of Appeals affirmed the trial court’s denial of the writ on August 13, 2014.⁴ Relator did not file a motion for rehearing or a petition for discretionary review within the prescribed time limits.⁵

sought, as opposed to the label given to the pleading. *See, e.g., Broggi v. Curry*, 571 S.W.2d 940, 940 (Tex. Crim. App. 1978) (citing *Ex parte Giles*, 502 S.W.2d 774 (Tex. Crim. App. 1973)).

² Relator pled guilty/no contest pursuant to a plea agreement to the offense of “possession of marijuana reduced to possession of drug paraphernalia.”

³ Relator claimed in his writ application that his conviction was void because he was convicted of an offense that was not included within the scope of the possession-of-marijuana offense he was charged with committing.

⁴ *Ex parte Jeffcoat*, No. 03-13-00375-CR, 2014 WL 4058833 (Tex. App.—Austin August 13, 2014) (not designated for publication).

⁵ TEX. R. APP. PROC. 49.1 (“A motion for rehearing may be filed within 15 days after the court of appeals’ judgment or order is rendered.”); TEX. R. APP. PROC. 68.2 (“The petition must be filed within 30 days after either the day the court of appeals’ judgment was rendered or the day the last timely motion for rehearing or timely motion for en banc reconsideration was overruled by the court of appeals.”).

Relator’s counsel claims that he intended to file a motion for rehearing with the court of appeals, but he missed the filing deadline because he did not receive notice of the decision of the court of appeals affirming the trial court’s denial of his writ. According to the Third Court of Appeals, its website reflects that notice of the memorandum opinion was e-mailed to Relator’s counsel on August 13, 2014 (the date of the opinion). However, Relator’s counsel asserted that he did not know about the opinion until October 23, 2014, when he received an e-mail informing him that the mandate in this case had issued.

On October 27, 2014, Relator filed with the Third Court of Appeals a motion for extension of time to file a motion for rehearing pursuant to Rule 4.5 of the Texas Rules of Appellate Procedure.⁶ Relator’s request for additional time to file a motion for rehearing was

⁶ TEX. R. APP. P. 4.5 provides as follows, in pertinent part:

- (a) *Additional Time to File Documents.* A party may move for additional time to file a motion for rehearing or en banc reconsideration in the court of appeals, a petition for review, or a petition for discretionary review, if the party did not—until after the time expired for filing the document—either receive notice of the judgment or order from the clerk or acquire actual knowledge of the rendition of the judgment or order.
- (b) *Procedure to Gain Additional Time.* The motion must state the earliest date when the party or the party’s attorney received notice or acquired actual knowledge that the judgment or order had been rendered. The motion must be filed within 15 days of that date but in no event more than 90 days after the date of the judgment or order.
- (c) *Where to File.*
 - (1) A motion for additional time to file a motion for rehearing or en banc reconsideration in the court of appeals must be filed in and ruled on by the court of appeals in which the case is pending.

....

timely—it was filed within the required 15 days of the date he claimed he received notice, and within the required 90 days of the date of the decision of the court of appeals. However, by letter dated December 15, 2014, the Clerk of the Third Court of Appeals informed Relator that his Motion for Additional Time to File a Motion for Rehearing “was denied.” Relator then filed an Application for Writ of Mandamus in this Court to compel the Third Court of Appeals to grant the Motion for Additional Time to File a Motion for Rehearing.⁷ That request was denied by this Court.⁸ Relator also tried filing an application for writ of habeas corpus with the 167th District Court in Travis County, but the 167th District Court concluded that it lacked jurisdiction to grant relief.⁹

-
- (d) *Order of the Court.* If the court finds that the motion for additional time was timely filed and the party did not—within the time for filing the motion for rehearing or en banc reconsideration, petition for review, or petition for discretionary review, as the case may be—receive the notice or have actual knowledge of the judgment or order, the court must grant the motion. The time for filing the document will begin to run on the date when the court grants the motion.

⁷ In an attempt to explain the lack of notice to the court of appeals, Relator’s counsel offered the theory that “his recent change in e-mail accounts or his habit of quickly deleting many e-mail messages may have been the cause of his lack of notice.”

⁸ *Ex parte Jeffcoat*, No. WR-82,597-01 (Tex. Crim. App. January 7, 2015).

⁹ The Travis County District Court ordered the Travis County District Clerk to transmit the record to this Court; however, the Clerk of this Court returned the record because the writ application was not addressed to this Court.

Relator’s Out-of-Time Motion for Rehearing

Shortly after this Court decided *Ex parte Valdez*,¹⁰ Relator filed an application for writ of habeas corpus with the Williamson County Court at Law No. 1 (the court of conviction) seeking an out-of-time motion for rehearing. In *Valdez*, we held that a trial court has the authority to grant habeas relief in the form of an out-of-time petition for discretionary review where the case involves a judgment imposing community supervision.¹¹ In Relator’s case, his application for habeas relief filed with the County Court sought an order granting him the right to file an out-of-time motion for rehearing with the Third Court of Appeals. On June 28, 2016, the judge of County Court at Law No. 1 granted relief to Relator allowing him to file an out-of-time motion for rehearing with the Third Court of Appeals.¹² Relator then filed his Motion for Rehearing with the Third Court of Appeals; however, the Clerk of the Third Court of Appeals sent Relator a letter stating that the court of appeals would take “no further action . . . in this appeal.”¹³ Relator now asks this Court to compel the Third Court of

¹⁰ 489 S.W.3d 462, 465-66 (Tex. Crim. App. 2016) (holding that the trial court has the authority to grant habeas relief in the form of an out-of-time petition for discretionary review where the case involves a judgment imposing community supervision).

¹¹ *Id.*

¹² The Third Court of Appeals verified to this Court that Relator had in fact submitted a copy of the county court’s order granting him an out-of-time motion for rehearing.

¹³ The Third Court of Appeals submitted a response dated September 23, 2016 to this Court’s August 24, 2016 *per curiam* order stating that it did not rule on Relator’s Motion for Rehearing because it did not have a “specific authorization by law” clarifying that it had appellate jurisdiction to rule on an out-of-time motion for rehearing. The court of appeals cited to TEX. R. APP. P. 19.1 and to *Abbott v. State*, 271 S.W.3d 694, 697 (Tex. Crim. App. 2008) (citing to *Abbott v. State*, 245 S.W.3d 19, 23 (Tex. App.—Waco 2007) (Gray, J., dissenting) (noting that courts of appeals have no appellate jurisdiction in criminal matters “absent a specific authorization by law”)).

Appeals to rule on his Motion for Rehearing. Relator is seeking mandamus relief complaining of the inaction of the court of appeals.

Mandamus relief is available only if Relator can establish two things: (1) that the act sought to be compelled is purely ministerial, and (2) there is no adequate remedy at law.¹⁴ In this case, we need only to address the first requirement. An act is ministerial “where the law clearly spells out the duty to be performed . . . with such certainty that nothing is left to the exercise of discretion or judgment.”¹⁵ Relator must have a “clear right to the relief sought,”¹⁶ meaning that he must show that the facts and circumstances of the case “dictate but one rational decision ‘under unequivocal, well-settled . . . and clearly controlling legal principles.’”¹⁷

However, in this case, the law is not clearly spelled out. *Ex parte Valdez* was a narrow holding—“a trial court is authorized to reset the clock for an out-of-time PDR should such relief be necessary through a meritorious application for a writ of habeas corpus.”¹⁸ *Ex parte Valdez* does not give clear guidance to the Third Court of Appeals on whether the trial court had authority to grant Relator an out-of-time motion for rehearing. Although a motion

¹⁴ *In re State ex rel. Weeks*, 391 S.W.3d 117, 121-22 (Tex. Crim. App. 2013).

¹⁵ *Texas Dept. Of Corrections v. Dalehite*, 623 S.W.2d 420, 424 (Tex. Crim. App. 1981).

¹⁶ *See Winders v. Presiding Judge of Criminal Dist. Court No. Three of Tarrant Cnty*, 118 S.W.3d 773, 775-76 (Tex. Crim. App. 2003).

¹⁷ *Weeks*, 391 S.W.3d at 122.

¹⁸ *Ex parte Valdez*, 489 S.W.3d 462, 465 (Tex. Crim. App. 2016).

for rehearing is addressed in the Rules of Appellate Procedure, it is not a statutory right as is a direct appeal,¹⁹ nor is it even permitted by statute, as is a petition for discretionary review.²⁰ Thus, it is not clear under established legal precedent that the trial court had authority to grant habeas relief in the form of an out-of-time motion for rehearing pursuant to our holding in *Ex parte Valdez*. A mandamus action is not the proper vehicle for us to decide a new rule of law. Therefore, the court of appeals does not have a ministerial duty to rule on the motion. Mandamus relief is denied.²¹

DELIVERED: April 26, 2017

DO NOT PUBLISH

¹⁹ TEX. CODE CRIM. PROC. Art. 44.02 (“A defendant in any criminal action has the right of appeal. . .”).

²⁰ TEX. CODE CRIM. PROC. Art. 44.45 (“The state or a defendant in a case may petition the Court of Criminal Appeals for review of the decision of a court of appeals in that case.”).

²¹ Relator’s petition also contains the alternative request that this Court grant relief on “the ultimate issue in this case.” Relator claims that his judgment is void. That issue is not properly before this Court, and thus we will not address it.