

Petition for Writ of Mandamus Denied and Memorandum Opinion filed June 1, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00404-CR

IN RE RALPH ARNOLD JACKSON, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On May 11, 2010, relator, Ralph Arnold Jackson, filed a petition for writ of mandamus in this Court. *See* Tex. Gov't Code Ann. §22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this Court to compel the Honorable Kevin Fine, presiding judge of the 177th District Court of Harris County, to provide him with the record of his trial in which he was convicted of theft or, in the alternative, order that relator be brought to the court so that he can read and copy the record or have it copied.¹

¹ This court affirmed relator's conviction for felony theft and 15-year prison sentence. *See Jackson v. State*, No. 14-08-00433-CR, 2009 WL 3050588 (Tex. App.—Houston [14th Dist.] Sept.10, 2009, no pet.) (not designated for publication).

Relator states he filed a motion for production of records and an application for writ of habeas corpus ad testificandum in the trial court. In a memorandum response to correspondence that was received from relator on June 13, 2008, the Harris County District Clerk advised relator to “Please contact your appeal attorney Keisha Smith . . . regarding your copy of the trial transcript.” Relator wrote Smith requesting that she provide him with his trial record, but she did not respond to his request.

Relator complains that he has not received any response from the trial court informing him of the disposition of his motion for production of records or his application for writ of habeas corpus ad testificandum. Relator requests that we compel the trial court to provide him with the trial record or, in the alternative, order that relator be brought to the court so that he can read and copy the record or have it copied.

To be entitled to mandamus relief, a relator must show that he has no adequate remedy at law to redress his alleged harm, and what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). Consideration of a motion that is properly filed and before the court is a ministerial act. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (orig. proceeding) (op. on reh’g). A relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed to do so. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding). A relator must show that the trial court received, was aware of, and asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). Filing something with the district clerk’s office does not mean the trial court is aware of it; nor is the clerk’s knowledge imputed to the trial court. *Id.* at n.2.

Relator has not provided a sufficient record in this original proceeding. He has not provided file-stamped copies of his motion for production of records or his application for writ of habeas corpus ad testificandum demonstrating that these motions are actually pending in the trial court. Relator requests that we compel the trial court to forward his motion for production of records and application for writ of habeas corpus ad testificandum to this court. However, it is relator's responsibility to file the record with his petition for writ of mandamus. *See* Tex. R. App. P. 52.7(a)(1) (requiring relator to file with petition certified or sworn copy of every document that is material to relator's claim for relief and that was filed in any underlying proceeding). Furthermore, relator has not shown that the trial court received, was aware of, and was asked to rule on his motion for production of records and application for writ of habeas corpus ad testificandum. Moreover, while we have jurisdiction to direct the trial court to rule on a motion, we may not tell the trial court how to rule on such motion. *See In re Ramirez*, 994 S.W.2d 682, 684 (Tex. App.—San Antonio 1988, orig. proceeding).

Relator has not established his entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Seymore.

Do Not Publish—Tex. R. App. P. 47.2(b).