

Petition for Writ of Mandamus Denied and Memorandum Opinion filed May 27, 2010



In The

Fourteenth Court of Appeals

**NO. 14-10-00432-CR
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EX PARTE REGINALD JOHNSON, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On May 17, 2010, relator, Reginald Johnson, 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 Hazel Jones, presiding judge of the 338th District Court of Harris County, to rule on his pending pre-conviction applications for writ of habeas.

Relator states that, in December 2009, he filed two pre-conviction applications for writ of habeas corpus seeking to reduce the bond for the offenses of theft and engaging in organized criminal activity.

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. Relator has not filed any sworn or certified copies of documents supporting his claim that he is entitled to mandamus relief. *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 included a file-stamped copy of either application for writ of habeas corpus with his petition and, therefore, has not demonstrated that his applications for writ of habeas corpus are pending in the trial court. Even if relator had provided file-stamped copies of his applications for writ of habeas corpus, he has not shown that the trial court received, was aware of, and was asked to rule on his applications for writ of habeas corpus.

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 Chief Justice Hedges and Justices Yates and Boyce.

Do Not Publish—Tex.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