

Petition for Writ of Mandamus Denied and Memorandum Opinion filed July 23, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00521-CR

IN RE JOE ANTHONY MARTINEZ, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On June 14, 2010, relator, Joe Anthony Martinez, 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 presiding judge of the 338th District Court of Harris County to rule on his "Motion to Designate, Reenact, Reinstate and Resume Preservation and Retention of All Evidence and Records."

Relator asserts in his petition that he filed his motion to designate with the trial court on August 5, 2008, but the trial court has taken no action his motion. Relator includes in the mandamus record a letter to the trial court dated August 5, 2008, requesting "the next available court docket and present this motion for hearing, if necessary, on the merits." Relator also asserts that he filed on February 2, 2009 a motion to compel the trial court to rule on his motion to designate. Relator also includes a letter

to the trial court dated February 2, 2009, requesting that the court to set his motion to compel and motion to designate “for the Next available Court Docket and, if necessary, grant hearings on the merits form [sic] this request and motion.”

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 provided file-stamped copies of his motion to designate and motion to compel demonstrating that the motions are actually pending in the trial court.

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).