

Petition for Writ of Mandamus Dismissed and Memorandum Opinion filed June 24, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00522-CR

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IN RE REGINALD JOHNSON, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

Relator, Reginald Johnson, an inmate in the Texas Department of Criminal Justice who is proceeding *pro se*, 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 his petition, Harrison complains that respondent, the Honorable Hazel Jones, has not ruled on his applications for pre-conviction writ of habeas corpus filed in the 338th District Court of Harris County in trial court cause numbers 1200779 and 1200780. *See* Tex. Code Crim. Proc. Ann. art. 11.08 (Vernon 2005). Johnson claims the applications have been pending since December 2009 but admits he is unable to establish the trial court is aware of them.

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 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 file-stamped copies of his applications for writ of habeas corpus demonstrating they are actually pending in the trial court. Absent a showing the trial court is aware of and been 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 Justices Brown, Sullivan, and Christopher.

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