

Petition for Writ of Mandamus Denied and Memorandum Opinion filed June 25, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00534-CR

IN RE JAMES CALBERG, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On June 16, 2010, relator, James Calberg, 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 for exculpatory evidence.

Relator states that he filed a motion for exculpatory evidence on December 8, 2009. However, that motion had the wrong cause number. Relator filed another motion for exculpatory evidence on March 18, 2010. Relator complains that it has now been over six months since he "initiated" his motion for exculpatory evidence with no action by the trial court on the 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. The trial court has a reasonable time in which to rule on a pending motion. *Ex parte Bates*, 65 S.W.3d 133, 135 (Tex. App.—Amarillo 2001, orig. proceeding).

Relator has not provided a sufficient record in this original proceeding. Relator has not provided a file-stamped copy of his motion for exculpatory evidence demonstrating that this motion is actually pending in the trial court. Relator also has not shown that the trial court received, was aware of, and was asked to rule on his motion for exculpatory evidence. Finally, relator has not shown that a reasonable time has lapsed since he filed the motion with the correct cause number.

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).