

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



In The

Fourteenth Court of Appeals

NO. 14-10-00562-CR

IN RE LIONEL NEWMAN, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On June 24, 2010, relator, Lionel Newman, 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 Belinda Hill, presiding judge of the 230th District Court of Harris County, to rule on the State's motion requesting temporary release of evidence.

On October 31, 2005, relator was convicted of the offense of burglary of habitation with intent to commit theft. *See Newman v. State*, No. 14-05-01125-CR, 2007 WL 1437624 (Tex. App.—Houston [14th Dist.] May 17, 2007, pet. ref'd) (mem. op.) (not designated for publication). Relator's conviction, which was affirmed by this court, was based on the recovery of relator's fingerprints at the crime scene. *Id.* at *2–3.

Relator contacted the Houston Latent Fingerprint Crime Lab asking that his case be re-examined after learning that the Houston City Council had authorized \$3 million to begin the process of reforming the Houston Police Department's fingerprint comparison unit, including paying a team of consultants to re-examine violent and property crime cases that have been awaiting review.

On February 23, 2010, the State filed a motion requesting temporary release of evidence. In the motion, the State explained that "issues have recently been discovered within the Houston Police Department Latent Print Laboratory, and consultants have been contracted to re-examine fingerprint evidence. In light of these publicized issues, Defendant has made a written request that the State again examine and compare the fingerprint evidence in cause number 1043620." The State requested that the trial court order the Harris County District Clerk's Office to temporarily release State's Exhibits 24 through 27—the fingerprint cards collected from the crime scene—to J.J. Freeze, an investigator with the Harris County District Attorney's Office, for delivery to the custody of the Houston Police Department Latent Print Laboratory for examination and comparison purposes. The State further requested that, at the completion of the examination and comparison, the fingerprint evidence be released by the Houston Police Department Latent Print Laboratory investigator J.J. Freeze or any other Harris County District Attorney's Office investigator for return to the custody of the Harris County District Clerk's Office.

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 was asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

Relator has not provided a certified or sworn copy of the State's motion requesting temporary release of evidence. *See* Tex. R. App. 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). Moreover, relator has not shown that the trial court received the motion, was aware of the motion, and was asked to rule on it. Filing something with the district clerk's office does not support the assertion that the trial court is aware of it; nor is the clerk's knowledge imputed to the trial court. *In re Villarreal*, 96 S.W.3d at n.2.

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.

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