

Petition for Writ of Mandamus Denied and Memorandum Opinion filed July 29, 2010.



In The

**Fourteenth Court of Appeals**

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NO. 14-10-00619-CR  
NO. 14-10-00620-CR  
NO. 14-10-00621-CR

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**IN RE TODD-WARREN ALTSCHUL, Relator**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS**

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**MEMORANDUM OPINION**

On Friday, July 09, 2010, relator Todd-Warren Altschul 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 Ben Hardin, presiding judge of the 23rd District Court of Brazoria County to rule on several motions.

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). 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 rule. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding). A relator must show that the trial court received or was asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

Sworn copies of the motions on which relator seeks a ruling are attached to his petition for writ of mandamus. The certificate of service indicates the motions were mailed April 1, 2010. However, the motions do not bear the file stamp of the Brazoria County District Clerk. Therefore, relator has not demonstrated the motions were actually filed, and are 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 Justices Anderson, Frost, and Seymore.

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