

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



In The

Fourteenth Court of Appeals

NO. 14-10-00631-CR

IN RE CHARLES FRANKLIN IRELAND, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On July 13, 2010, relator 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. Relator complains that respondent, the Honorable Hazel B. Jones, presiding judge of the 338th District Court of Harris County, has failed to (1) order the State to deliver the DNA evidence to the court or show the court in writing why it cannot deliver the DNA evidence; and (2) rule in a reasonable time on his motion for DNA testing.

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 request motion for DNA testing demonstrating it is actually pending in the trial court.¹ The State's duty to deliver the evidence or explain in writing why it cannot only arises on receipt of the motion by the trial court. Tex. Code. Crim. Proc. art. 64.02(a). Absent a showing the trial court is aware of and been asked to rule on his motion, 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.

Do Not Publish — Tex. R. App. P. 47.2(b).

¹ In his petition, relator acknowledges he was appointed an attorney to represent him in this matter, Bob Wicoff.