

Petition for Writ of Mandamus Denied and Memorandum Opinion filed July 27, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00639-CR

IN RE MICHAEL WAYNE BARNES, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On July 15, 2010, relator, Michael Wayne Barnes, 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 183rd District Court of Harris County to rule on his motion for forensic DNA testing and appointment of counsel.

Relator asserts in his petition that he filed his motion on March 18, 2010 “through the Harris County District Clerk’s office which presented the Motion and Appointment of Counsel pursuant to Tex. Code Crim. Proc. Art. 64.01–.05 to the 183[rd] District Court of Harris County.”

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).

Relator has not provided a sufficient record in this original proceeding. Relator has not provided file-stamped copies of his motion to designate and motion to compel demonstrating that the motions are actually pending in the trial court. Also, the motion relator attaches to his petition is actually entitled “Defendant’s Motion for Presentation and Forensic Testing of D.N.A. Evidence,” makes no request for appointment of counsel, and is not sworn or certified. *See* Tex. R. App. P. 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. While relator avers in his petition that he filed his petition with the Harris County District Clerk’s Office, “which presented” the motion to the trial court, 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. *In re Villarreal*, 96 S.W.3d at 710 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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