

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
February 16, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-17-00102-CV

IN RE TROY WIGLEY, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
434th District Court
Fort Bend County, Texas
Trial Court Cause No. 16-DCV-231014**

MEMORANDUM OPINION

On February 7, 2017, relator Troy Wigley filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to command the Honorable James H. Shoemake, presiding judge of the 434th District Court of Fort Bend County, to rule on a motion entitled "Motion for an Evidentiary Hearing, or

Motion for Appointment of Counsel, or Motion for Leave to Amend” that relator allegedly filed on July 21, 2016. Relator alleges that he requested a decision on this motion from September 6, 2016 to December of 2016, but that the trial court has not ruled.

A trial court is required to rule on a motion within a reasonable time after the motion has been submitted to the court for a ruling or a ruling on the motion has been requested. *In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). The relator must show that the motion on which he seeks a ruling was both filed and brought to the attention of the trial court. *See Id.*; *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding).

As the party seeking relief, the relator has the burden of providing this court with a sufficient record to establish the relator’s right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); Tex. R. App. P. 52.7(a)(1) (relator must file with petition “a certified or sworn copy of every document that is material to the relator’s claim for relief and that was filed in any underlying proceeding”).

Therefore, relator has the burden to provide this court with a file-stamped certified or sworn copy of the Motion and a record showing that this Motion was

brought to the trial court's attention.¹ Relator has not provided this court with any record, much less one that shows that he is entitled to mandamus relief.

Further, Texas Rule of Appellate Procedure 52.3(j) provides that “[t]he person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.” *See* Tex. R. App. P. 52.3(j). Relator's petition does not contain this certification.

For these reasons, we deny relator's petition for writ of mandamus. We also deny as moot relator's motion to proceed in forma pauperis because this court does not charge inmates fees or costs.

PER CURIAM

Panel consists of Justices Boyce, Jamison, and Brown.

¹ *See In re Callicotte*, No.14-16-00937-CV, 2016 WL 6990037 (Tex. App.—Houston [14th Dist.] Nov. 29, 2016, orig. proceeding) (per curiam) (mem. op.) (denying petition for writ of mandamus because relator has not included file-stamped copies of the motions in the record); *In re Bishop*, No. 14-06-00636-CV, 2006 WL 2434200, at *1 (Tex. App.—Houston [14th Dist.] Aug. 24, 2006, orig. proceeding) (per curiam) (mem. op.) (denying petition for writ of mandamus because there was no file stamp or other indication the motions were in fact filed and are pending before the trial court).