

Petition for Writ of Mandamus Denied and Opinion filed June 22, 2017.



In The

Fourteenth Court of Appeals

NO. 14-17-00448-CR

IN RE RIGOBERTO CEPEDA, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
176th District Court
Harris County, Texas
Trial Court Cause No. 1420219**

MEMORANDUM OPINION

On June 7, 2017, relator Rigoberto Cepeda 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 compel the judge of the 176th District Court of Harris County, to rule on an application for writ of habeas corpus (habeas application) that he allegedly filed with the trial court. The habeas

application is attached as Exhibit A to the petition and has a stamp indicating that it was filed on September 1, 2016.

This court has jurisdiction to issue writ of mandamus to compel a district court to consider and rule on a pending application for writ of habeas corpus if (1) relator has asked the trial court to rule on his application, and (2) the trial court either refused to rule or failed to rule on the application within what constitutes a reasonable time, considering all the surrounding circumstances. *See State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App.1987) (orig. proceeding); *Barnes v. State*, 832 S.W.2d 424, 426–27 (Tex. App.—Houston [1st Dist.] 1992, no pet.); *In re Jefferson*, No. 14-12-01061-CR, 2012 WL 6017718, at *1 (Tex. App.—Houston [14th Dist.] Dec. 4, 2012, orig. proceeding) (per curiam) (mem. op.). To be entitled to relief, the record must show both that the habeas application was filed and brought to the attention of the trial court; it is not enough that the application is on file. *See In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding); *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding); *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding).

As the party seeking relief, relator has the burden of providing this court with a sufficient record to establish his right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); 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”).

Relator has not complied with governing law and rules in three ways.

First, the habeas application attached as Exhibit A is not certified or sworn to as required by Texas Rule of Appellate Procedure 52.7.

Second, 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.

Third, relator has not included any documents in the record that show that he has brought the habeas application to the attention of the trial court. In particular, when relator allegedly filed his habeas application on September 1, 2016, the presiding judge of the 176th Judicial District Court was the Honorable Stacey W. Bond. Judge Bond ceased to hold the office of judge of the 176th District Court, Harris County, Texas on January 1, 2017. Nothing in the record shows that relator has requested the respondent’s successor, Judge Nikita V. Harmon, to rule on the habeas application, and if so, when such request was made.

For these reasons, we deny the petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Boyce, Donovan, and Jewell.
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