

Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-08-00480-CR

IN RE Robert MARTINEZ

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Alma L. López, Chief Justice
Catherine Stone, Justice
Phylis J. Speedlin, Justice

Delivered and Filed: July 23, 2008

PETITION FOR WRIT OF MANDAMUS DENIED

On July 8, 2008, relator filed an Application for Leave to File Petition for Writ of Mandamus. No leave is required to file a petition for writ of mandamus; therefore, we deny the motion for leave to file as moot. *See* TEX. R. APP. P. 52.1.

On July 8, 2008, relator filed a petition for writ of mandamus, asking this court to order the trial court to rule on his pro se Motion for Speedy Trial and to set his trial date. Mr. Philip Anthony Meyer has been appointed to represent relator in the trial court. We conclude that appointed counsel for relator is also his counsel for an original proceeding on the issue presented.

¹ This proceeding arises out of Cause Nos. 229666 & 229667, styled *The State of Texas v. Robert Martinez*, pending in the County Court at Law No. 9, Bexar County, Texas, the Honorable Laura Salinas presiding.

To obtain mandamus relief in a criminal matter, the relator must establish that (1) the act sought to be compelled is ministerial rather than discretionary in nature and (2) there is no adequate remedy at law. *Dickens v. Second Court of Appeals*, 727 S.W.2d 542, 548 (Tex. Crim. App. 1987). Respondent has no ministerial duty to rule on relator's pro se motion because relator is represented by appointed counsel, and relator is not entitled to hybrid representation. *See Patrick v. State*, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995). Consequently, the respondent did not violate a ministerial duty by declining to rule on relator's motion. Therefore, this court has determined that relator is not entitled to the relief sought, and the petition is denied. TEX. R. APP. P. 52.8(a).

PER CURIAM

DO NOT PUBLISH