



MEMORANDUM OPINION

No. 04-08-00528-CR

IN RE Alfred GARCIA

Original Mandamus Proceedings¹

PER CURIAM

Sitting: Karen Angelini, Justice
 Sandee Bryan Marion, Justice
 Rebecca Simmons, Justice

Delivered and Filed: July 30, 2008

PETITION FOR WRIT OF MANDAMUS DENIED

On July 22, 2008, relator filed a petition for writ of mandamus, asking this court to order the trial court to hold a hearing and grant his motion for speedy trial. Mr. Tony Jimenez 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 issues presented.

A trial court cannot be found to have abused its discretion until the complainant establishes that the court (1) had a legal duty to perform a non-discretionary act, (2) was asked to perform the act, and (3) failed or refused to do so. *O'Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding). When a motion is properly filed and pending before a trial court,

¹ This proceeding arises out of Cause Nos. 2007-CR-11340 and 2007-CR-11341, styled *State of Texas v. Alfred Garcia*, pending in the 290th Judicial District Court, Bexar County, Texas, the Honorable Sharon MacRae.

the act of considering and ruling upon that motion is a ministerial act. *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding).

Respondent, however, has no duty to rule on relator's pro se requests 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 relator's rights. 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).

Relator is encouraged to refrain from filing further pro se petitions regarding his pending criminal proceedings.²

PER CURIAM

DO NOT PUBLISH

² We further note that relator's mandamus was postmarked on July 15, 2008, but not filed with this court until July 22, 2008 and the Bexar County District Clerk shows that relator was sentenced in cause #2007-CR-11340 on July 18, 2008 and that cause #2007-CR-11341 was dismissed as part of the agreement.