MEMORANDUM OPINION

No. 04-08-00669-CR

IN RE Mark **MARTINEZ**

Original Mandamus Proceeding[1]

PER CURIAM

Sitting: Alma L. López, Chief Justice
     Karen Angelini, Justice
     Steven C. Hilbig, Justice

Delivered and Filed: September 24, 2008

PETITION FOR WRIT OF MANDAMUS DENIED

   Relator Mark Martinez filed a petition for writ of mandamus, complaining of the trial court's

failure to rule on various motions.[2] Relator has been appointed counsel to represent him in the trial

court. We conclude that relator's appointed counsel in the trial court is also his counsel for an

original proceeding on the issue presented.

   To obtain mandamus relief in a criminal matter, the relator must establish: (1) the act sought

to be compelled is ministerial rather than discretionary in nature, and (2) there is no adequate

remedy at law. *Deleon v. District Clerk*, 187 S.W.3d 473, 474 (Tex. Crim. App. 2006). Respondent

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[1] This proceeding arises out of Cause No. 2008-CR-7316-B, styled *The State of Texas v. Mark A. Martinez*, pending in the 379th Judicial District Court, Bexar County, Texas, the Honorable Bert Richardson presiding.

[2] Relator's petition is entitled "Petition for Writ of Habeas Corpus Mandamus;" however, we construe it as a mandamus petition because it seeks to compel the trial court to rule on the various motions.

has no ministerial duty to rule on relator's pro se motion because relator is represented by appointed counsel and is not entitled to hybrid representation. *See Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007); *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. Accordingly, relator's petition for writ of mandamus is denied. TEX. R. APP. P. 52.8(a).

PER CURIAM

DO NOT PUBLISH