

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



MEMORANDUM OPINION

No. 04-08-00825-CR

IN RE Elijah MARTINEZ

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Alma L. López, Chief Justice
Phylis J. Speedlin, Justice
Steven C. Hilbig, Justice

Delivered and Filed: December 10, 2008

PETITION FOR WRIT OF MANDAMUS DENIED

On November 7, 2008, relator Elijah Martinez filed a petition for writ of mandamus, complaining of the trial court's failure to rule on various motions. Counsel has been appointed to represent relator 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 has no ministerial duty to rule on relator's *pro se* motions because relator is represented by appointed

¹ This proceeding arises out of Cause No. 2008-CR-6967, styled *The State of Texas v. Elijah Martinez*, pending in the 175th Judicial District Court, Bexar County, Texas, the Honorable Mary Román presiding.

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 motions. 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DO NOT PUBLISH