

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



**MEMORANDUM OPINION**

No. 04-10-00564-CR

**IN RE Nolan RODRIGUEZ**

Original Mandamus Proceeding<sup>1</sup>

PER CURIAM

Sitting: Phylis J. Speedlin, Justice  
Steven C. Hilbig, Justice  
Marialyn Barnard, Justice

Delivered and Filed: August 25, 2010

PETITION FOR WRIT OF MANDAMUS DENIED

On August 2, 2010, relator Nolan Rodriguez filed a petition for writ of mandamus, complaining of the trial court's order denying his motion for judgment nunc pro tunc. For the foregoing reasons, we deny the petition for writ of mandamus.

On October 12, 1978, a jury convicted relator of attempted capital murder in Cause No. 78-CR-1749, and relator contends he was orally sentenced to twenty years' confinement. On December 4, 1978, relator plead guilty to possession of a prohibited weapon in Cause No. 78-CR-1748. Relator complains the trial court sentenced him to ten years' confinement in Cause No. 78-CR-1748, and

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<sup>1</sup>[\[a\]](#) This proceeding arises out of Cause No. 78-CR-1749, styled *State v. Rodriguez*, in the 144th Judicial District Court, Bexar County, Texas, the Honorable Catherine Torres-Stahl presiding.

then improperly ordered the twenty year sentence imposed in Cause No. 78-CR-1749 to run consecutively to the ten year sentence imposed in Cause No. 78-CR-1748. Relator subsequently appealed Cause No. 78-CR-1749, and the conviction was affirmed by this court. *See Rodriguez v. State*, 644 S.W.2d 200 (Tex. App.—San Antonio 1982, no pet.). Relator also filed a petition for writ of habeas corpus in the Texas Court of Criminal Appeals, which was dismissed. *See Ex parte Rodriguez*, No. WR-28, 015-04, 2010 WL 2113112 (Tex. Crim. App. May 26, 2010).

Relator then filed a motion for judgment nunc pro tunc in the trial court, seeking the deletion of the cumulation order. On July 6, 2010, the trial court denied the motion for judgment nunc pro tunc, concluding there was no error in the defendant's judgment. Relator now seeks mandamus relief from this court, requesting that we compel the trial court to reform the judgment and sentence in Cause No. 78-CR-1749 by deleting the cumulation order.

We agree with the trial court's denial of the motion for judgment nunc pro tunc because such an entry is not appropriate. "The purpose of a nunc pro tunc order is to correctly reflect from the records of the court a judgment actually made by it, but which for some reason was not entered of record at the proper time." *Alvarez v. State*, 605 S.W.2d 615, 617 (Tex. Crim. App. 1980). An error in the entry of a judgment is clerical as long as the error did not come about as the product of judicial reasoning. *Id.* The judgment in this case accurately reflected the trial court's action, and any error here resulted from a judicial determination, not a clerical error. As a result, any error the trial court made in the cumulation order cannot be remedied by a judgment nunc pro tunc.

Therefore, we conclude the trial court did not err in denying relator's motion for judgment nunc pro tunc. Accordingly, the petition for writ of mandamus is DENIED. *See* TEX. R. APP. P. 52.8(a).

PER CURIAM

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