



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-13-00057-CR

IN RE Terry TRENTACOSTA

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Sandee Bryan Marion, Justice
Marialyn Barnard, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: April 3, 2013

PETITION FOR WRIT OF MANDAMUS DENIED

On January 24, 2013, Relator Terry Trentacosta filed a petition for writ of mandamus, complaining of the trial court's denial of his motion for appointment of counsel and motion for presentation and forensic testing of DNA evidence. However, in a criminal case, in order to be entitled to mandamus relief relator must establish: "(1) he has no other adequate legal remedy; and (2) under the relevant facts and law, the act sought to be compelled is purely ministerial." *In re Reed*, 137 S.W.3d 676, 678 (Tex. App.—San Antonio 2004, orig. proceeding) (citing *State ex rel. Hill v. Court of Appeals for Fifth Dist.*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001)).

On March 25, 2013, the trial court entered an amended order denying the motion for DNA testing, which is an appealable order. *See* TEX. CODE CRIM. PROC. ANN. art. 64.05 (West 2006); *see also* TEX. R. APP. PROC. 26.2(a)(1) (providing the notice of appeal must be filed

¹ This proceeding arises out of Cause No. 2006-CR-6469, styled *State of Texas v. Terry Trentacosta*, in the 399th Judicial District Court, Bexar County, Texas, the Honorable Ray J. Olivarri presiding.

within 30 days after the day the trial court enters an appealable order). Therefore, Trentacosta has an adequate remedy by filing an appeal from the trial court's March 25, 2013 amended order.

As to Trentacosta's complaint that the trial court denied his motion to appoint counsel, we also deny the requested relief. A trial court is not required to appoint counsel unless it finds there are reasonable grounds for the motion to be filed, which is a finding that we review for an abuse of discretion. *See In re Ludwig*, 162 S.W.3d 454, 455 (Tex. App.—Waco 2005, orig. proceeding). Therefore, the appointment of counsel is not a purely ministerial act that is subject to mandamus relief. *See In re Reed*, 137 S.W.3d at 678.

Accordingly, the court is of the opinion that Trentacosta has not established he is entitled to mandamus relief. *Id.* Therefore, the petition for writ of mandamus is DENIED. *See* TEX. R. APP. P. 52.8(a).

PER CURIAM

DO NOT PUBLISH