



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-13-00691-CR

IN RE Anthony JACKSON

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Catherine Stone, Chief Justice
Santee Bryan Marion, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: December 11, 2013

PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED

On October 7, 2013, relator Anthony Jackson, an inmate in the Texas Department of Criminal Justice-Institutional Division, filed a pro se petition for writ of mandamus complaining of the trial court's failure to rule on his pro se motion requesting appointment of counsel for the purpose of filing a motion to request DNA testing of evidence containing biological material. *See* TEX. CODE CRIM. PROC. ANN. art. 64.01(a-1), (c) (West Supp. 2013). On October 8, 2013, this court requested a response to the petition for writ of mandamus. Neither the State nor the respondent judge has filed a response. Because the trial court has a ministerial duty to rule on pending motions within a reasonable period of time, we conditionally grant mandamus relief and direct the trial court to rule on Jackson's pending motion.

¹ This proceeding arises out of Cause No. 1998CR0872, styled *The State of Texas v. Anthony Maurice Jackson*, pending in the 379th Judicial District Court, Bexar County, Texas, the Honorable Ron Rangel presiding.

DISCUSSION

Jackson complains the trial court has failed to rule on his pro se motion for appointment of counsel which has been pending before the trial court since June 2013. A trial court is required to consider and rule upon pending motions within a reasonable time. *In re Ramirez*, 994 S.W.2d 682, 683 (Tex. App.—San Antonio 1998, orig. proceeding). “When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act.” *Id.* at 683-84 (citing *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding)). If a motion has been properly filed and brought to the attention of the trial court, this court may direct the trial court to consider and rule upon the motion; however, we may not tell the trial court what ruling it should make. *See Ramirez*, 994 S.W.2d at 684.

The record contains some evidence that the motion was filed and that the trial court has been made aware of the motion. Jackson submitted an affidavit with his petition in which his mother swears that she personally contacted the clerk of the court on more than one occasion regarding Jackson’s motion. According to the affidavit, the clerk indicated that the judge was aware of the motion but that he “did not answer or rule on inmate pro se motions.” The clerk of this court also verified that the motion, which included a request for hearing, was filed in June 2013 and remains pending. It is clear that Jackson has attempted to bring the motion to the attention of the court to the best of his ability and the court has failed to respond. This court requested a response to the mandamus petition in October. The respondent judge has not provided a response or taken any action to rule on Jackson’s pending motion despite the filing of this mandamus petition.

While six months is not a per se unreasonable delay, because the trial court has had previous notice that Jackson, who is incarcerated and claims to be indigent, desires a ruling on his

motion, we conditionally grant mandamus relief. *See In re Hearn*, 137 S.W.3d 681, 686 (Tex. App.—San Antonio 2004, orig. proceeding). We are confident the trial court will do as directed. The writ will issue only if we are notified that the trial court has failed to act on Jackson’s motion as ordered by this court.

PER CURIAM

DO NOT PUBLISH