

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00179-CV

IN RE RICHARD HUDSON, JR.

Original Proceeding

MEMORANDUM OPINION

A petition for writ of mandamus filed by Richard Hudson, Jr. seeks an order to compel the trial court to enter a judgment *nunc pro tunc* crediting Hudson with pre-sentence jail time credit on his sentence in Cause No. 19,802 for time he spent incarcerated while he was also in custody on another case. *See Ex parte Ybarra*, 149 S.W.3d 147, 148-49 (Tex. Crim. App. 2004). Hudson contends he is entitled to “jail time credit of 445 days from September 5, 2007 to November 24, 2008[.]” The State’s response includes a copy of a judgment *nunc pro tunc* signed by the trial court on April 30, 2010. The judgment *nunc pro tunc* recites that Hudson’s incarceration periods include September 4, 2007, through September 5, 2007, October 15, 2007, through November 12, 2007, and November 24, 2008.

Hudson was arrested for possession of a controlled substance and was released on bond on September 5, 2007.¹ A grand jury indicted Hudson on November 15, 2007. Bench warrants issued for hearings set for December 18, 2007, December 20, 2007, January 28, 2008, March 11, 2008, June 9, 2008, and November 24, 2008. The mandamus record does not show that the bench warrants were served on Hudson's custodian, however, and the docket sheet indicates that Hudson did not appear on several occasions in 2008 because he was in federal custody. Hudson first appeared before the trial court on November 24, 2008, the date of his conviction and the commencement date for his sentence in Cause No. 19,802.

Article 42.03 requires the trial court to give credit on the defendant's sentence for the time that the defendant has spent "in jail for the case[.]" TEX. CODE CRIM. PROC. ANN. art. 42.03, § 2(a)(1) (Vernon Supp. 2009). A defendant confined by another jurisdiction is in jail for the case only if a detainer or hold is lodged against him. *See Nixon v. State*, 572 S.W.2d 699, 701 (Tex. Crim. App. 1978). The time credit required

¹ The document titled "Surety's Application for Warrant for Principal" is dated August 24, 2007, and a partially obscured copy of a bail bond attached to Hudson's trial memorandum is dated September 5, 2007. These documents fail to establish that Hudson's bonds were surrendered and never reinstated, as he argued in the trial memorandum. The documents attached to the State's response to the petition for writ of mandamus indicate that Hudson was arrested on September 4, 2007, and released on \$10,000 bail on September 5, 2007. In its mandamus response, the State informs the Court that a bond surrender was filed on October 15, 2007, while Hudson was in the custody of Cherokee County, that Hudson was transferred to the custody of Polk County on October 24, 2007, and that Hudson was released from the custody of Polk County to the Texas Department of Criminal Justice on November 12, 2007. These dates correspond to jail-time credit dates stated on the judgment.

by Article 42.03 includes pre-sentence time spent incarcerated on another case if a detainer or hold has been placed on the defendant in the case for which he seeks credit. *See Ex parte Bynum*, 772 S.W.2d 113, 114-15 (Tex. Crim. App. 1989). No formal detainer is required, and the defendant is entitled to jail time credit if the record establishes that the defendant “was detained in this cause by some means other than formal detainer.” *Ex parte Rodriguez*, 195 S.W.3d 700, 703 (Tex. Crim. App. 2006). In this case, however, the record does not show that the State asked the entity exercising physical custody over Hudson to hold Hudson so that Hudson could answer the charges in Cause No. 19,802. Hudson has not shown that he was under constructive detention by Polk County for the dates for which he seeks credit on his sentence. *See Bynum*, 772 S.W.2d at 115.

Hudson fails to demonstrate that the act sought to be compelled is purely ministerial and the relator has a clear and indisputable right to relief. *State ex rel. Hill v. Court of Appeals for the Fifth Dist.*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001). Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Submitted on May 3, 2010
Opinion Delivered May 27, 2010
Before McKeithen, C.J., Kreger and Horton, JJ.