In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00684-CR

IN RE MICHAEL W. BOHANNAN

Original Proceeding

MEMORANDUM OPINION

Michael W. Bohannan filed a petition for writ of mandamus seeking to compel the trial court to rule on a series of *pro se* motions filed in a criminal case. Bohannan argues that the trial court has a ministerial duty to consider and rule upon Bohannan's *pro se* motions because Bohannan's appointed counsel has allegedly abandoned the case. Neither the failure to perform a ministerial duty by the trial court nor the lack of an adequate remedy by appeal is demonstrated in the mandamus record. Accordingly, we deny the petition for writ of mandamus.

To be entitled to a writ of mandamus in a criminal case, the relator must demonstrate that: (1) there is no adequate remedy at law, and (2) there is a clear and

indisputable right to the relief sought. *See State v. Patrick*, 86 S.W.3d 592, 594 (Tex. Crim. App. 2002). "[W]hen a motion is properly filed and pending before a trial court, the act of considering and resolving it is ministerial." *Ex parte Bates*, 65 S.W.3d 133, 134-35 (Tex. App.—Amarillo 2001, orig. proceeding). Because a criminal defendant is not entitled to hybrid representation, no duty arises for a trial court to consider and rule upon *pro se* motions filed while the defendant is represented by counsel. *See Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007).

A defendant in a criminal case has the right to represent himself, but that right does not attach until it has been clearly and unequivocally asserted. *Ex parte Winton*, 837 S.W.2d 134, 135 (Tex. Crim. App. 1992). Once the right has attached, the denial of the right of self-representation may be challenged on appeal. *See, e.g., Johnson v. State*, 760 S.W.2d 277, 278-79 (Tex. Crim. App. 1988). The contention that appeal provides an inadequate remedy is implicit in Bohannan's argument that the prohibition against hybrid representation does not apply here because his counsel abandoned him in September 2011. Bohannan's claim of abandonment is not supported by the record. Bohannan argues that he established abandonment by filing a document titled "Declaration Of Conflict Between Attorney And Client And Motion For Substitution Of Appointed Counsel" on October 20, 2011. We cannot determine what issues were raised by this document because Bohannan has not included it in the mandamus record. *See* Tex. R. App. P. 52.3(k)(1)(A). The docket sheet indicates that on May 11, 2011, Bohannan

entered a plea and obtained a September 26, 2011 trial setting. The docket sheet reveals no activity on September 26, 2011, but the mandamus record provides no insight regarding the reason a trial did not take place on that date.[1] On this record, we cannot say that an appeal would not be an adequate remedy for an implied denial of Bohannan's right of self-representation. We deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Opinion Delivered December 21, 2011
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.

[1] The indictment accuses Bohannan of violating the terms of an order of civil commitment as a sexually violent predator. This Court reversed the order of civil commitment but the Supreme Court has granted petition for review. *See In re Commitment of Bohannan*, No. 09-09-00165-CV, 2010 WL 2854254 (Tex. App.—Beaumont Jul. 22, 2010, pet. granted).