



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 2-09-190-CV

IN RE THEODIS DODSON, JR.

RELATOR

ORIGINAL PROCEEDING

MEMORANDUM OPINION¹

Relator asks this court to compel the trial court to rule on his motion for DNA testing and request for counsel to assist with his motion for DNA testing under chapter 64 of the code of criminal procedure. *See* Tex. Code Crim. Proc. Ann. art. 64.01 (Vernon 2006).

Nothing in the record indicates that this motion has been presented to the trial court. Presentment of the motion to the trial court is a prerequisite to mandamus relief. *See O'Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) ("Mandamus will issue when there is a legal duty to perform a non-discretionary act, a demand for performance, and a refusal."); *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding) ("Indeed,

¹ *See* Tex. R. App. P. 47.4.

one can hardly be faulted for doing nothing if he were never aware of the need to act.”). Accordingly, relator’s petition for writ of mandamus is denied.

PER CURIAM

PANEL: MCCOY, J.; CAYCE, C.J.; and LIVINGSTON, J.

DELIVERED: July 14, 2009