



COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-09-325-CV

IN RE MICHAEL RICHARD MORRISSEY

RELATOR

ORIGINAL PROCEEDING

MEMORANDUM OPINION¹

The court has considered Relator's petition for writ of mandamus and is of the opinion that relief should be denied.² Accordingly, Relator's petition for writ of mandamus is denied.

¹ [...](#) See Tex. R. App. P. 47.4.

² [...](#) This court has been informed by the district clerk's office and by the trial court clerks for Criminal District Court No. 1 and Criminal District Court No. 3 that they have not received the application for writ of habeas corpus that Relator contends he filed on May 31, 2009. 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) (orig. proceeding) ("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, one can hardly be faulted for doing nothing if he were never aware of the need to act."). Because Relator's motion has never been received by the district clerk's office for filing, the Respondent has not been provided an opportunity to rule upon the motion.

PER CURIAM

PANEL: GARDNER, DAUPHINOT, and WALKER, JJ.

DELIVERED: November 25, 2009