

NO. 07-09-0265-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
DECEMBER 8, 2009

IN RE RANDY LACKEY, RELATOR

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

MEMORANDUM OPINION ON RELATOR'S MOTION FOR REHEARING

By this original proceeding, Relator, Randy Lackey, an inmate currently incarcerated in the Institutional Division of the Texas Department of Criminal Justice, proceeding *pro se* and *in forma pauperis*, sought a writ of mandamus to compel the Honorable Gordon Green, Judge of the 287th District Court of Bailey County, to “consider and rule on his brief and motions filed after April 5, 2004, and to proceed to trial and or final judgment.” By a memorandum opinion dated October 1, 2009, addressing Relator’s request that we compel the trial court to proceed to trial, we denied the relief requested. Relator filed a timely motion for rehearing, wherein he requested this Court clarify its ruling with respect to his request that we compel the trial court to consider and rule on his motion to reinstate his previously abated civil cause of action in Cause Number 7764.

After receiving Relator's motion for rehearing, by letter dated November 6, 2009, we requested the trial court and the real party in interest to file a response to that motion. Thereafter, we received a Supplemental Clerk's Record containing three documents filed in Cause Number 7764: (1) *Order for Reinstatement*, (2) *Order Setting Hearing*, and (3) *Order for Teleconference with Prisoner*, all dated November 17, 2009.

To show entitlement to mandamus relief, a relator must satisfy three requirements: (1) a legal duty to perform; (2) a demand for performance; and (3) a refusal to act. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979). Because the trial court has now acted, Relator would not be entitled to the relief requested. Therefore, Relator's motion for rehearing is denied.

Patrick A. Pirtle
Justice