



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-16-00215-CR

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IN RE BRIAN KEITH MELTON

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Original Mandamus Proceeding

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Before Morriss, C.J., Moseley and Burgess, JJ.  
Memorandum Opinion by Justice Burgess

## MEMORANDUM OPINION

Pursuant to two plea agreements, Brian Keith Melton pled guilty on July 5, 2001, to two charges of burglary of a habitation in two separate cause numbers.<sup>1</sup> Melton agreed to a twenty-year sentence on each charge, the sentences were to run concurrently, and he was to receive 258 days' time credit. In January 2003, the trial court entered nunc pro tunc judgments in each case assessing nineteen years and 200 days' confinement, along with 258 days' time credit. On August 7, 2015, Melton sought mandamus relief asking this Court to compel the trial court to vacate its January 2003 nunc pro tunc judgments of conviction. *See In re Melton*, 478 S.W.3d 153, 154 (Tex. App.—Texarkana 2015, orig. proceeding). We conditionally granted Melton's petition for writ of mandamus and directed the trial court to vacate the nunc pro tunc judgments of conviction entered on January 8, 2003. *Id.* at 157. On December 1, 2015, the trial court entered an order vacating the prior nunc pro tunc judgments. On July 8, 2016, Melton filed a petition for writ of mandamus under our cause number 06-16-00125-CR, asking this Court to vacate the original judgments of July 5, 2001. We denied Melton's petition, finding he failed to show that, prior to filing his petition for writ of mandamus, he sought relief from the trial court.

Melton has now filed a petition for writ of mandamus asking this Court to order the trial court to vacate the July 5, 2001, judgments of conviction. Attached to Melton's petition are two

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<sup>1</sup>Melton was convicted in trial court cause numbers 20,570 and 20,572. He filed a motion to vacate in each case, but has filed a single petition for writ of mandamus. The issues and arguments in the two cases are identical; therefore, the single petition for mandamus relief is appropriate.

motions to vacate, one bearing trial court cause number 20,570 and the other, cause number 20,572.

In his latest petition, Melton states,

It is now with[]in this Court[']s authority to order those judgments of July 5[], 2001[,] as void and to be vacated. As Relator has requested this action by the trial court and it has failed to take this action within the prescribed time[,] [i]t is clear the trial court has no intentions of acting on its[] own. As it has known these judgments were illegal for over 14[ ]years now, and failed to act.<sup>[2]</sup>

Melton’s petition does not ask us to compel the trial court to rule on his motions to vacate. Instead, it appears that Melton simply wants this Court to make a ruling for the trial court. “While we have jurisdiction to direct the trial court to make a decision, we may not tell the court what that decision should be.” *In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding).

We will therefore read Melton’s petition for writ of mandamus to include a complaint that the trial court has failed to rule on his motions to vacate filed in August 2016. To be entitled to mandamus relief, a relator must show (1) that he has no adequate remedy at law and (2) that what he seeks to compel is a ministerial act. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding). The ministerial-act prerequisite is satisfied if the relator can show a clear right to the relief sought. *State ex rel. Young v. Sixth Judicial Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). When a relator fails to meet both of these requirements, then the petition for writ of mandamus should be denied. *Id.*

A trial court is required to consider and rule on a properly filed motion within a reasonable period of time once a ruling has been requested. *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex.

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<sup>2</sup>The record before this Court shows that Melton’s motions to vacate were filed with the trial court on August 3, 2016.

App.—Waco 2008, orig. proceeding). Thus, consideration of a request or motion that has been properly filed and brought before the court is a ministerial act. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (orig. proceeding). To obtain mandamus relief for the trial court’s refusal to rule on a motion, a relator must establish that “(1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule.” *Sarkissian*, 243 S.W.3d at 861. Merely filing a motion or letter with the clerk does not impute knowledge to the trial court. *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding).

In this case, Melton provides this Court with the two motions to vacate, along with a cover letter addressed to the clerk of the trial court bearing a “filed” stamp.<sup>3</sup> In his letter to the clerk, Melton stated, in part, “It is my hope that these motions can be brought to the court’s attention at the soonest possible date.” Melton also stated in his motions, “With that said[,] it is now the trial court[’]s legal duty to order the Judgment of July 5[,], 2001[,], in cause number [ ]20,570 vacated. If the trial court should fail to act within 75 days from the filing date, applicant will be forced to seek [m]andamus relief.” Melton has not, however, provided us with anything establishing that, after he filed his motions, he asked the trial court for a hearing or ruling on his motions and that the trial court refused to consider them. Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding).

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<sup>3</sup>Neither of Melton’s motions contain a “filed” stamp; however, the declaration attached to his motions shows he drafted the motions on July 25, 2016, which is also the date shown on the stamped copy of his letter to the clerk of the court.

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, finds that the Melton's petition should be denied. Accordingly, we deny his petition for writ of mandamus.

Ralph K. Burgess  
Justice

Date Submitted: February 6, 2017  
Date Decided: Febraury 7, 2017

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