



IN THE
TENTH COURT OF APPEALS

No. 10-15-00362-CR
No. 10-15-00363-CR

IN RE LAWRENCE G. QUINTON

Original Proceeding

MEMORANDUM OPINION

The trial court denied Relator's pro se motion for DNA testing and for appointment of counsel in each case below. Relator seeks a writ of mandamus directing the trial court to appoint counsel and to order DNA testing, and ordering the State to produce the alleged biological evidence to be tested.¹

¹ The application (petition) for writ of mandamus lacks proof of service on the State and on the trial court. A copy of all documents presented to the Court must be served *on all parties* (i.e., the trial court judge and the State through the district attorney in this proceeding) and must contain proof of service. TEX. R. APP. P. 9.5, 52.2. The petition also lacks key contents required by Rule 52. *Id.* 52.3, 52.7. It does not include the certification required by Rule of Appellate Procedure 52.3(j). *Id.* 52.3(j). It lacks a sworn record, and the unsworn record/appendix omits the underlying motion for DNA testing and for appointment of counsel. *Id.* 52.3(k), 52.7. To expedite this matter, we invoke Rule of Appellate Procedure 2 to suspend these requirements. *Id.* 2.

“Mandamus relief may be granted if the relator can demonstrate that (1) the act sought to be compelled is purely ministerial and (2) the relator has no other adequate legal remedy.” *In re Ludwig*, 162 S.W.3d 454, 455 (Tex. App.—Waco 2005, orig. proceeding) (citing *Neveu v. Culver*, 105 S.W.3d 641, 642 (Tex. Crim. App. 2003) (orig. proceeding)). Because a trial court’s decision to grant a motion for DNA testing or a motion to appoint counsel is discretionary, not purely ministerial, mandamus relief is not proper. *See id.* at 454-55; TEX. CODE CRIM. PROC. ANN. arts. 64.01(c), 64.03(a) (West Supp. 2014). Also, because the denial of a motion for DNA testing and the denial of a motion for appointment of counsel are appealable, Relator has an adequate legal remedy by appeal. *See Gutierrez v. State*, 307 S.W.3d 318, 323 (Tex. Crim. App. 2010) (holding that denial of article 64.01(c) motion for appointment of counsel is appealable issue, *but not immediately appealable in interlocutory appeal*); TEX. CODE CRIM. PROC. ANN. arts. 64.05 (West Supp. 2014); *cf. Neveu*, 162 S.W.3d at 642-43. Accordingly, we deny the petitions for writ of mandamus.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
(Chief Justice Gray concurs in the result without opinion)

Petitions denied
Opinion delivered and filed December 10, 2015
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