

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

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NO. 03-18-00564-CV

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In re Jeffrey Allen Whitfield

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ORIGINAL PROCEEDING FROM BELL COUNTY

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MEMORANDUM OPINION

Relator Jeffrey Allen Whitfield, an inmate proceeding pro se, has filed a petition for writ of mandamus, asking this Court to direct the lower court to rule or take other action on Whitfield’s motion for DNA testing, which he claims to have filed in the court below “on or about” June 5, 2018. When a mandamus petition is based on an allegation that a trial court has failed to rule on a properly filed motion, the relator will not be entitled to mandamus relief unless he establishes that the trial court: (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) either refused to rule on the motion or failed to rule within a reasonable time.<sup>1</sup> Here, Whitfield asserts that he filed his motion less than three months ago. Even if we were to assume that the district court was made aware of the motion at that time, three months does not ordinarily constitute an unreasonable length of time for a motion to remain pending.<sup>2</sup> Moreover, Whitfield has

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<sup>1</sup> See *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding); *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

<sup>2</sup> See, e.g., *In re Blakeney*, 254 S.W.3d 659, 662–63 (Tex. App.—Texarkana 2008, orig. proceeding); *In re Villarreal*, 96 S.W.3d at 711; *Ex parte Bates*, 65 S.W.3d 133, 136 (Tex. App.—Amarillo 2001, orig. proceeding); *In re Chavez*, 62 S.W.3d 225, 229 (Tex. App.—Amarillo

failed to provide this Court with a copy of the motion, so there is no way for us to determine when or even if the motion was filed properly in the court below. On this record, we cannot conclude that Whitfield is entitled to the extraordinary relief requested.

The petition for writ of mandamus is denied.<sup>3</sup>

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Bob Pemberton, Justice

Before Chief Justice Rose, Justices Pemberton and Field

Filed: August 29, 2018

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2001, orig. proceeding); *see also In re Halley*, No. 03-15-00310-CV, 2015 Tex. App. LEXIS 7188, at \*4 (Tex. App.—Austin July 14, 2015, orig. proceeding) (mem. op.); *In re Gonzales*, No. 07-06-00324-CV, 2006 Tex. App. LEXIS 8057, at \*3 (Tex. App.—Amarillo Sept. 6, 2006, orig. proceeding) (mem. op.); *In re Garcia*, No. 04-09-00123-CR, 2009 Tex. App. LEXIS 1541, at \*1–2 (Tex. App.—San Antonio Mar. 11, 2009) (mem. op.).

<sup>3</sup> *See* Tex. R. App. P. 52.8(a).