



NUMBER 13-09-628-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE: ISAAC DUANE WHITE

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Yañez, Benavides, and Vela
Per Curiam Memorandum Opinion¹**

Relator, Isaac Duane White, pro se, filed a petition for writ of mandamus in the above cause on November 19, 2009, by which he requests this Court to compel the respondent, presiding judge of the 377th District Court in Victoria, Texas, to hold a hearing on his motion for DNA testing in trial court cause number 93-2-15. According to relator, the requested testing is material and will establish his innocence. Relator has not provided this Court with a copy of his motion.

Mandamus relief may be granted if the relator shows that: (1) the act sought to be

¹ See TEX. R. APP. P. 52.8(d) ("When denying relief, the court may hand down an opinion but is not required to do so."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

compelled is purely ministerial; and (2) there is no adequate remedy at law.² The relator must have a “clear right” to the relief sought and the merits of the relief sought must be “beyond dispute.”³ “The requirement of a clear legal right necessitates that the law plainly describes the duty to be performed such that there is no room for the exercise of discretion.”⁴

To obtain DNA testing under chapter 64 of the code of criminal procedure, several requirements must be met, including that: (1) “the evidence . . . still exists and is in a condition making DNA testing possible”; (2) “identity was or is an issue in the case;” and (3) “the convicted person establishes by a preponderance of the evidence that . . . the person would not have been convicted if exculpatory results had been obtained through DNA testing.”⁵ Nothing in article 64.03 requires a hearing of any sort concerning the trial court’s determination of whether a defendant is entitled to DNA testing.⁶

The Court, having examined and fully considered the petition for writ of mandamus, is of the opinion that relator has not shown himself entitled to the relief sought. Accordingly, the petition for writ of mandamus is DENIED.⁷

PER CURIAM

Do not publish. See TEX. R. APP. P. 47.2(b).
Delivered and filed
the 24th day of November, 2009.

² See *Deleon v. Dist. Clerk*, 187 S.W.3d 473, 474 (Tex. Crim. App. 2006) (orig. proceeding).

³ See *id.*

⁴ See *id.*

⁵ See TEX. CODE CRIM. PROC. ANN. art. 64.03 (a) (Vernon Supp. 2009).

⁶ See *id.*; *Rivera v. State*, 89 S.W.3d 55, 58-59 (Tex. Crim. App. 2002).

⁷ See TEX. R. APP. P. 52.8(a).