

NO. 12-09-00051-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

§

***IN RE: MICHAEL KENNEDY,
RELATOR***

§ ***ORIGINAL PROCEEDING***

§

MEMORANDUM OPINION

Michael Kennedy filed a pro se petition for mandamus relief asking us to direct the trial court to rule on his motion to dismiss his appellate counsel.

Before mandamus relief may issue to require a trial court to rule on a motion, the relator must establish that the court was asked to rule and failed or refused to do so within a reasonable time. *See Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.–San Antonio 1997, orig. proceeding). The record in this case does not include any correspondence or other document in which Kennedy calls the trial court's attention to the motion or requests that a hearing be set to determine its merit. The trial court cannot be faulted for doing nothing when it was not aware of the need to act. *In re Villareal*, 96 S.W.3d 708, 710 (Tex. App.–Amarillo 2003, orig. proceeding). We cannot simply assume that the trial court knew of its duty to act and neglected to perform it. *Id.* Accordingly, Kennedy's petition for writ of mandamus is *denied*.

BRIAN HOYLE

Justice

Opinion delivered February 25, 2009.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)