

NOS. 12-17-00191-CV
12-17-00192-CV
12-17-00193-CV

IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
RODERICK DEMETRIUS CREAG, § *ORIGINAL PROCEEDING*
SR.,
RELATOR §

MEMORANDUM OPINION
PER CURIAM

Roderick Demetrius Creag, Sr. filed this original proceeding, in which he complains of the trial court's failure to rule on his motion to correct a bill of costs.¹ We deny the petition.

BACKGROUND

On February 16, 2017, Relator filed a motion to correct the bill of costs to delete fees he alleged to be unauthorized. On April 18, he sent a letter to the trial court and asked for a ruling on the motion. He contends that the trial court has yet to rule on his motion, and asks this Court to order the trial court to rule on the motion.

PREREQUISITES TO MANDAMUS

Mandamus is an extraordinary remedy. *In re Sw. Bell Tel. Co., L.P.*, 235 S.W.3d 619, 623 (Tex. 2007) (orig. proceeding). A writ of mandamus will issue only when the relator has no adequate remedy by appeal and the trial court committed a clear abuse of discretion. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding). The relator

¹ Respondent is the Honorable Pam Fletcher, Judge of the 349th District Court in Houston County, Texas.

has the burden of establishing both of these prerequisites. *In re Fitzgerald*, 429 S.W.3d 886, 891 (Tex. App.—Tyler 2014, orig. proceeding). “[M]andamus will not issue when the law provides another plain, adequate, and complete remedy.” *In re Tex. Dep’t of Family & Protective Servs.*, 210 S.W.3d 609, 613 (Tex. 2006) (orig. proceeding).

AVAILABILITY OF MANDAMUS

To obtain a writ of mandamus compelling a trial court to consider and rule on a motion, the relator must show that the trial court (1) had a legal duty to perform a nondiscretionary act, (2) was asked to perform the act, and (3) failed or refused to do so. *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding). Generally, a trial court has a nondiscretionary duty to consider and rule on a motion within a reasonable time. *In re Thomas*, No. 12–05–00261–CV, 2005 WL 2155244, at *1 (Tex. App.—Tyler Sept. 7, 2005, orig. proceeding) (mem. op.). A trial court cannot be expected to consider a motion not called to its attention. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding). It is incumbent upon the relator to establish that the motion has been called to the trial court’s attention. *See id.*

In this case, Relator’s petition includes a copy of a letter purportedly sent to the trial court in April 2017. The letter is not file stamped or certified, and the record does not evidence that the letter was actually received by the trial court. *See* TEX. R. APP. P. 52.3(k)(1)(A); *see also In re Taylor*, No. 06-16-00016-CV, 2016 WL 1435386, at *1 (Tex. App.—Texarkana Apr. 12, 2016, orig. proceeding) (mem. op.) (relator’s letters to court were not file-marked or accompanied by other evidence showing their receipt, and did not show “the trial court received, was aware of, and was asked to rule on his pleadings[.]”). Nor does Relator’s petition contain evidence, such as a docket sheet, demonstrating that the trial court has not ruled on his motion. *See* TEX. R. APP. P. 52.3(k)(1)(A) (requiring a relator to provide “a certified or sworn copy of any order complained of, or any other document showing the matter complained of”); *Molina*, 94 S.W.3d at 886; *see also In re Vasquez*, No. 05-15-00592-CV, 2015 WL 2375504, at *1 (Tex. App.—Dallas May 18, 2015, orig. proceeding) (mem. op.) (denying petition that failed to include a docket sheet or other form or proof that trial court had not ruled on motion). Thus, Relator has not shown his entitlement to mandamus relief.

DISPOSITION

Because Relator has not shown that he is entitled to mandamus relief, we *deny* Relator's petition for writ of mandamus.

Opinion delivered June 21, 2017.

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

(PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

JUNE 21, 2017

NO. 12-17-00191-CV

RODERICK DEMETRIUS CREAG, SR.,
Relator
V.

HON. PAM FLETCHER,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Roderick Demetrius Creag, Sr.; who is the relator in Cause No. 12-CR-145, pending on the docket of the 349th Judicial District Court of Houston County, Texas. Said petition for writ of mandamus having been filed herein on June 14, 2017, and the same having been duly considered, because it is the opinion of this Court that the writ should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **denied**.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
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NO. 12-17-00192-CV

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V.

HON. PAM FLETCHER,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Roderick Demetrius Creag, Sr.; who is the relator in Cause No. 12-CR-146, pending on the docket of the 349th Judicial District Court of Houston County, Texas. Said petition for writ of mandamus having been filed herein on June 14, 2017, and the same having been duly considered, because it is the opinion of this Court that the writ should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **denied**.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

JUNE 21, 2017

NO. 12-17-00193-CV

RODERICK DEMETRIUS CREAG, SR.,
Relator
V.

HON. PAM FLETCHER,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Roderick Demetrius Creag, Sr.; who is the relator in Cause No. 12-CR-147, pending on the docket of the 349th Judicial District Court of Houston County, Texas. Said petition for writ of mandamus having been filed herein on June 14, 2017, and the same having been duly considered, because it is the opinion of this Court that the writ should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **denied**.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.