



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

IN RE:	§	No. 08-16-00323-CR
THE STATE OF TEXAS,	§	AN ORIGINAL PROCEEDING IN
RELATOR.	§	MANDAMUS
	§	

**MEMORANDUM OPINION**

Relator, the State of Texas, has filed a petition asking that we issue the writ of mandamus against the Honorable Marcos Lizarraga, Judge of the 168th District Court of El Paso County, Texas, ordering him to submit Count II of the indictment to the jury in cause number 20140D04968, styled *The State of Texas v. Daisy Mora Harper*. Additionally, the State requests that we issue the writ of prohibition against Respondent to enjoin him from granting the defendant's motion for a directed verdict. The requested relief is denied.

To be entitled to mandamus relief, the relator must make two showings: (1) that he has no adequate remedy at law, and (2) that what he seeks to compel is a ministerial act. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex.Crim.App. 2013); see *In re State of Texas*, 162 S.W.3d 672, 675 (Tex.App.--El Paso 2005, orig. proceeding). The ministerial act requirement is satisfied if the relator can show a clear right to the relief sought. *Weeks*, 391 S.W.3d at 122. A clear right to relief is shown when the facts and circumstances dictate but one rational decision "under unequivocal, well-settled (i.e., from extant statutory, constitutional, or case law sources),

and clearly controlling legal principles.” *Id.*, quoting *Bowen v. Carnes*, 343 S.W.3d 805, 810 (Tex.Crim.App. 2011).

A writ of prohibition operates like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. *Holloway v. Fifth Court of Appeals*, 767 S.W.2d 680, 682 (Tex. 1989); *In re Cap Rock Energy Corporation*, 225 S.W.3d 160 (Tex.App.--El Paso 2005, original proceeding). The purpose of the writ is to enable a superior court to protect and enforce its jurisdiction and judgments. *Holloway*, 767 S.W.2d at 683; *In re Cap Rock*, 225 S.W.3d at 160. The writ is typically used to protect the subject matter of an appeal or to prohibit an unlawful interference with the enforcement of a superior court's orders and judgments. *Holloway*, 767 S.W.2d at 683.

On December 9, 2016, this Court denied the State’s motion to stay all proceedings in cause number 20140D04968, but Respondent stayed the trial until January 10, 2017 in order for the State to pursue mandamus relief from Respondent’s stated intention to grant the defense’s motion for a directed verdict. The State filed its petition on December 29, 2016 and the court reporter filed the reporter’s record on January 3, 2017. Further, the State filed a supplemental petition on January 6, 2017. After conducting an expedited review of the State’s petition, the State’s supplemental petition, and the mandamus record, which includes the reporter’s record of the trial, we conclude that the State has failed to establish that it is entitled to the relief it has requested. Accordingly, the State’s petition for the writ of mandamus and prohibition is denied.

January 9, 2017

YVONNE T. RODRIGUEZ, Justice

Before McClure, C.J., Rodriguez, and Palafox, JJ.

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