



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

	§	No. 08-22-00242-CV
IN RE:	§	
	§	AN ORIGINAL PROCEEDING
ROGER LIVERMAN,	§	
	§	IN MANDAMUS
RELATOR.	§	
	§	

OPINION

Relator Roger Liverman, proceeding *pro se*, filed a petition for a writ of mandamus against the judge of the County Court of Upton County, Texas. The petition is denied.

BACKGROUND

Relator alleges in his petition that he filed the following five documents with the County Court of Upton County, Texas regarding the pending probate proceedings regarding the Estate of James Wesley McDonald: (1) a motion to recuse the judge of the County Court of Upton County; (2) a motion to recuse the Upton County District Court Clerk; (3) a motion to remove the executor of the estate based on a conflict of interest; (4) a “Formal Notification” of the commission of felonies by the Upton County District Court Clerk; and (5) “Formal Notification” of the commission of felonies by the executor of the estate. In both of the “Formal Notifications” of

crimes, the Relator requests that the Upton County Court notify “the Proper Federal Authorities” of the alleged crimes for investigation and prosecution. Relator attached file-stamped copies of each of the documents to his petition. The motion to recuse the judge of the Upton County Court, the motion to recuse the Upton County District Clerk , and motion to remove the executor of the estate based on a conflict of interest are all stamped as filed by the district clerk’s office on April 13, 2022. The two “Formal Notifications” are file stamped as filed by the district clerk’s office on April 14, 2022.

Relator claims that the judge of the County Court of Upton County has not set a hearing or issued a ruling on any of these motions. He, therefore, requests the Court to issue a writ of mandamus compelling the judge to issue a ruling or set a hearing.

DISCUSSION

“A trial court has a ministerial duty to consider and rule on motions properly filed and pending before it, and mandamus may issue to compel the trial court to act.” *See In re Harris*, No. 08-19-00208-CR, 2019 WL 6242315, at *1 (Tex.App.—El Paso Nov. 22, 2019, no pet.)(not designated for publication). “A relator must establish the trial court (1) had a legal duty to rule on the motions; (2) was asked to rule on the motions; and (3) failed or refused to rule on the motions within a reasonable time.” *Id.* “A trial court is not required to consider a motion that has not been called to its attention by proper means.” *Id.*

Reviewing the documents Realtor attached to his petition, nothing establishes that his motions were brought to the attention of the trial court. While the attached documents demonstrate they were filed with the district clerk on April 13 and April 14, 2022, filing a motion with the district clerk does not establish that the motion was brought to the attention of the trial court. *In re Layton*, 257 S.W.3d 794, 795 (Tex.App.—Amarillo 2008, no pet.). The clerk’s knowledge of the

motion is not imputed to the trial court. *Id.* Because Relator’s petition fails to demonstrate that his motions have been actually brought to the attention of the trial court or presented for a ruling, we must deny Relator’s petition for a writ of mandamus. *See id.*

Further, mandamus relief is appropriate only to correct a clear abuse of discretion or to compel performance of a ministerial duty, and where the relator has no adequate remedy by appeal. *In re Reece*, 341 S.W.3d 360, 364 (Tex. 2011)(orig. proceeding); *In re Dominguez*, 621 S.W.3d 899, 904 (Tex.App.—El Paso 2021, no pet.)(orig. proceeding). Relator has not identified any authority—and we are not independently aware of any—stating that a county court in Texas has a ministerial duty to notify federal law enforcement of alleged crimes. As a result, even had Relator provided sufficient documentation showing his motions had been presented to the trial court, we would still deny his petition for a writ of mandamus related to his “Formal Notifications” of alleged federal crimes committed by the Upton County District Clerk and executor of the estate.

CONCLUSION

After reviewing the mandamus petition and record, we conclude Relator has failed to show entitlement to mandamus relief on this record. Accordingly, we deny the petition for writ of mandamus.

YVONNE T. RODRIGUEZ, Chief Justice

December 16, 2022

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