

**Petition for Writ of Mandamus is DENIED; Opinion Filed March 15, 2013.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

**No. 05-13-00049-CV**

**IN RE MICHAEL LYNN SIMS, Relator**

**On Appeal from the 86th District Court  
Kaufman County, Texas  
Trial Court Cause No. 17022**

**MEMORANDUM OPINION**

**Before Justices Moseley, Francis, and Fillmore  
Opinion by Justice Moseley**

Relator contends the trial court violated a ministerial duty by not ruling or otherwise acting on his July 27, 2012 motion for DNA testing. The facts and issues are well known to the parties, so we need not recount them herein. Based on the record before us, we conclude the motion in question is repetitive of a motion filed by relator and ruled on by the trial court in 2009. Relator is not entitled to a writ of mandamus requiring the trial court to repeatedly rule on the same motion. *See* TEX. R. APP. P. 52.8(a); *In re Birdwell*, \_\_\_ S.W.3d \_\_\_, No. 10-12-00283-CR, 2012 WL 6062673, at \*7 (Tex. App–Waco Dec. 6, 2012, orig. proceeding); *In re Durden*, No. 14-12-00143-CR, 2012 WL 590815, at \*2 (Tex. App.—Houston [14th Dist.] Feb. 23, 2012, orig. proceeding) (mem. op., not designated for publication). Accordingly, we **DENY** relator’s petition for writ of mandamus.

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/Jim Moseley/

**JIM MOSELEY  
JUSTICE**