

Denied and Opinion Filed October 21, 2016



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01219-CV

IN RE ALFRED LEE STONE, Relator

Original Proceeding from the 283rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-91-42452

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Stoddart
Opinion by Justice Francis

Relator files this petition for writ of mandamus asking the Court to order the trial court to rule on four post-conviction motions purportedly filed on November 1, 2014 and to withdraw an order admitting certain expert testimony into evidence at relator's 1991 trial.

To establish a right to mandamus relief in a criminal case, relator must show the trial court violated a ministerial duty and no adequate remedy at law exists. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding). Further, as the party seeking relief, relator has the burden of providing the Court with a sufficient mandamus record to establish his right to relief. *Lizcano v. Chatham*, 416 S.W.3d 862, 863 (Tex. Crim. App. 2011) (orig. proceeding) (Alcala, J. concurring); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). The mandamus record before us does not include a certified or sworn copy of the trial court's docket sheet or other proof establishing relator filed the motions for which he seeks orders and showing the trial court failed to rule on the motions. TEX. R. APP. P.

52.3(k)(1)(a); TEX. R. APP. P. 52.7(a). Absent such a record, we cannot conduct a meaningful review of relator's claims. *Lizcano*, 416 S.W.3d at 863 (Alcala, J. concurring). As for the request that we order the trial court to reverse an order admitting evidence at the 1991 trial, we lack jurisdiction under article 11.07 of the Code of Criminal Procedure. TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2015); *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding).

Accordingly, we **DENY** the petition for writ of mandamus as to the request that we order the trial court to rule and **DISMISS** the petition for writ of mandamus for want of jurisdiction as to the request that we order the trial court to withdraw the order admitting expert testimony at trial.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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