

Denied and Opinion Filed November 29, 2016



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

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No. 05-16-01352-CV

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**IN RE MARIO RODRIGUEZ, Relator**

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**On Appeal from the 282nd Judicial District Court**  
**Dallas County, Texas**  
**Trial Court Cause No. F-13-72121**

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MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill  
Opinion by Justice Lang

Before the Court is relator's November 16, 2016 petition for writ of mandamus in which he asks the Court to order the trial court to hear and rule on his motion for bench warrant and motion for speedy trial.

A trial court has a ministerial duty to rule upon a properly filed and timely presented motion. *See State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). To be properly filed and timely presented, a motion must be presented to a trial court at a time when the court has authority to act on the motion. *See In re Hogg-Bey*, No. 05-15-01421-CV, 2015 WL 9591997, at \*1-2 (Tex. App.—Dallas Dec. 30, 2015, orig. proceeding) (mem. op., not designated for publication). To establish entitlement to mandamus relief for a trial court's refusal to act, the relator must establish that the trial court had a legal duty to perform a ministerial act, relator made demand for performance, and the court refused to perform. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979).

Relator has not met these requirements and is not entitled to mandamus relief. After filing the motions, relator did not ask the trial court to set the motions for hearing and did not otherwise alert the trial court that it had not yet taken action on the motions. Relator's failure to request a hearing is fatal to his request for a writ of mandamus. *See, e.g., In re Dong Sheng Huang*, 491 S.W.3d 383, 385–86 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (denying mandamus relief where relator sent two reminder letters to the court regarding his motions but did not set the motions for submission or hearing or file a motion for ruling that was denied). Accordingly, we deny relator's petition for writ of mandamus.

/Douglas S. Lang/  
DOUGLAS S. LANG  
JUSTICE

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