

Denied and Opinion Filed November 29, 2016



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

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No. 05-16-01369-CV

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IN RE HOWARD HOLLAND, Relator

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Original Proceeding from the 86th Judicial District Court  
Kaufman County, Texas  
Trial Court Cause No. 31610-86

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MEMORANDUM OPINION

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

Before the Court is relator's November 18, 2016 motion to compel the trial court to rule on relator's motion for the production of the grand jury transcript. Because the act of considering and ruling upon a properly-filed and pending motion is not discretionary, mandamus may issue to compel a trial court to act. *See Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). As such, we treat relator's motion as a petition for writ of mandamus.

To establish a right to mandamus relief in a criminal case, the relator must show that the trial court violated a ministerial duty and there is no adequate remedy at law. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding). Further, as the party seeking relief, the relator has the burden of providing the Court with a sufficient mandamus record to establish his right to mandamus 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); *In re Chavez*, 62 S.W.3d 225, 228, 229 (Tex. App.—Amarillo 2001, orig. proceeding). Where, as here, the relator seeks an order directing the trial court to rule on a motion, relator must provide evidence against which this Court may test the reasonableness of the trial court’s alleged delay. *In re Chavez*, 62 S.W.3d at 229. Relator has failed to meet those requirements.

Here, the mandamus record does not include a certified or sworn copy of the trial court’s docket sheet or other proof to establish relator filed the motion for production of the grand jury transcript or that the trial court has failed to rule on relator’s motion. TEX. R. APP. P. 52.3(k)(1)(a); 52.7(a). The absence of a mandamus record prevents this Court from evaluating the circumstances of this case and the merits of relator’s complaints. *Lizcano*, 416 S.W.3d at 863 (Alcala, J. concurring); *see also In re Chavez*, 62 S.W.3d at 229; *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding). Accordingly, we deny relator’s November 18, 2016 motion.

/Bill Whitehill/  
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BILL WHITEHILL  
JUSTICE

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