

**DISMISS in Part, and DENY in Part; Opinion Filed April 18, 2017.**



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

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**No. 05-17-00331-CV**

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**IN RE RODRICK D. EARL, Relator**

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**Original Proceeding from the 291st Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. F98-02346**

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**MEMORANDUM OPINION**

Before Justices Lang, Evans, and Stoddart  
Opinion by Justice Evans

Before the Court is relator's petition for writ of mandamus in which he complains that neither the district court nor the district court clerk have taken any action on motions for retesting of DNA materials allegedly filed by relator. Relator's petition is not certified as required by rule 52.3(j) of the rules of appellate procedure and does not include an appendix and record containing the necessary contents set out in rule 52.3(k)(1) and rule 52.7(a). TEX. R. APP. P. 52.3(j), 52.3(k)(1)(a), 52.7(a). Although these deficiencies alone constitute sufficient reasons to deny mandamus relief, in the interest of judicial economy we address the petition.

To be entitled to mandamus relief, a relator must show that he has no adequate remedy at law to redress his alleged harm, and what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S. W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). Consideration of a motion that is properly filed and before the court is a ministerial act. *State ex rel. Curry v. Gray*,

726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (orig. proceeding). A relator must establish the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed to do so. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding); *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). It is relator's burden to provide the court with a record sufficient to establish his right to relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); TEX. R. APP. P. 52.3(k), 52.7(a).

Here, relator's petition does not include a record showing that he properly filed the motions, that he requested a hearing on the motions or asked the trial court to rule, or that the trial court has refused to rule. As such, relator has not established his entitlement to the extraordinary relief of a writ of mandamus. *See In re Florence*, 14-11-00096-CR, 2011 WL 553241, at \*1 (Tex. App.—Houston [14th Dist.] Feb. 17, 2011, no pet.) (absent proof that the motions were properly filed, and that the trial court has been requested to rule on the motions but refused to do so, relator has not established his entitlement to the extraordinary relief of a writ of mandamus).

To the extent relator asks the Court to order the district clerk to act, we are without jurisdiction to do so because we do not have mandamus jurisdiction over a district clerk unless the clerk is interfering with our appellate jurisdiction. TEX. GOV'T CODE ANN. § 22.221(a)-(b) (West 2004) (court of appeals may only issue writ of mandamus against district and county judges or as necessary to enforce jurisdiction of appellate court); *In re Wilkerson*, 05-16-00322-CV, 2016 WL 1320815, at \*1 (Tex. App.—Dallas Apr. 5, 2016, orig. proceeding) (citing *In re Simpson*, 997 S.W.2d 939, 939 (Tex. App.—Waco 1999, orig. proceeding)). Our jurisdiction is not in jeopardy here.

Accordingly, we deny the petition as to relator's request for an order directing the trial court to rule, and we dismiss the petition for want of jurisdiction as to relator's request that we order the district clerk to take action on the motions.

/David Evans/  
DAVID EVANS  
JUSTICE

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