

DENY; and Opinion Filed September 14, 2017.



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

**No. 05-17-01075-CV
No. 05-17-01076-CV**

IN RE SENRICK SHERN WILKERSON, Relator

**Original Proceeding from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F10-01183 and F10-01184**

MEMORANDUM OPINION

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

Relator was convicted in December 2010 of sexual performance by a child, sexual assault of a child, and compelling prostitution. This Court affirmed the convictions on direct appeal. *Senrick Shern Wilkerson v. State*, Nos. 05-11-00060-CR, 05-11-00061-CR, 05-11-00062-CR, 2012 WL 2877623 (Tex. App.—Dallas July 16, 2012, pet. ref'd) (not designated for publication). Currently before this Court is relator's "motion for contempt of court" in which he asks the Court to hold the trial court in contempt of court for purportedly failing to rule on a motion for nunc pro tunc, a motion for Chapter 64 DNA testing, and a motion for judicial review of fraudulent documentation. We treat relator's motion as a petition for writ of mandamus.

To be entitled to mandamus relief in a criminal matter, 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*, No. 14-11-00096-CR, 2011 WL 553241, at *1 (Tex. App.—Houston [14th Dist.] Feb. 17, 2011, orig. proceeding) (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).

Accordingly, we deny the petition for writ of mandamus.

/Ada Brown/

ADA BROWN
JUSTICE

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