

DENY; and Opinion Filed November 16, 2017.



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

**No. 05-17-01271-CV
No. 05-17-01273-CV
No. 05-17-01274-CV
No. 05-17-01275-CV
No. 05-17-01276-CV**

IN RE JAMES H. GENTRY, Relator

**Original Proceeding from the 199th Judicial District Court
Collin County, Texas
Trial Court Cause Nos. 199-81623-07, 199-81624-07, 199-81625-07,
199-81626-07, and 199-81627-07**

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Boatright

In 2008, relator pleaded guilty to multiple counts of theft, and this Court affirmed the convictions. *Gentry v. State*, No. 05-08-01032-CR, 2009 WL 4201766, at *3 (Tex. App.—Dallas Nov. 30, 2009, pet. ref'd). In this original proceeding, relator complains that the trial court has not ruled on relator's requests for copies of State's exhibits 2 through 11.

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. *In re Gonzales*, No. 14-16-01024-CR, 2017 WL 124343, at *1 (Tex. App.—Houston [14th Dist., 2017, orig. proceeding) (mem. op.); *see*

also *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding) (stating this proposition in a civil case).

A trial court has a ministerial duty to rule upon a properly filed and timely presented motion. *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. *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). A trial court has a reasonable time within which to consider a motion and to rule. *In re Craig*, 426 S.W.3d 106, 107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding).

Here, the mandamus record does not include a certified or sworn copy of the trial court's docket sheet or other proof that establishes relator filed requests for the exhibits and establishes the trial court has failed to act on relator's requests within a reasonable time. TEX. R. APP. P. 52.3(k)(1)(a), 52.7(a). Relator's petition does not include a record showing that he is entitled to mandamus relief. *See In re Harris*, No. 14-07-231-CV, 2007 WL 1412105, at *1 (Tex. App.—Houston [14th Dist.] May 15, 2007, orig. proceeding) (mem. op.) (holding relator not entitled to mandamus relief when record did not show relator alerted trial court of motion by setting it for submission or hearing). Accordingly, we deny relator's petition for writ of mandamus.

/Jason Boatright/
JASON BOATRRIGHT
JUSTICE

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