

Denied and Opinion Filed December 1, 2017



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

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No. 05-17-01357-CV

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**IN RE RHEASHAD LAMAR LOTT, Relator**

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**Original Proceeding from the Criminal District Court No. 2**  
**Dallas County, Texas**  
**Trial Court Cause No. F09-00780-RE**

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**MEMORANDUM OPINION**

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

Relator Rheashad Lamar Lott filed a “notice of appeal of default denial of trial court” on November 21, 2017, in which he complains that the trial court has not ruled on five motions purportedly filed on July 20, 2017. We construe this notice as a petition for writ of mandamus seeking a writ ordering the trial court to rule on the motions.

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).

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). 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); *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, 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 the motions, requested the trial court to rule on the motions, and the trial court refused to rule or failed to rule 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.

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/Lana Myers/  
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LANA MYERS  
JUSTICE