

Denied and Opinion Filed April 6, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00212-CV

IN RE QUINCY BLAKELY, Relator

Original Proceeding from the 194th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F15-18020

MEMORANDUM OPINION

Before Justices Myers, Stoddart, and Whitehill
Opinion by Justice Whitehill

Before the Court is relator's February 28, 2018 petition for writ of mandamus in which he complains that the trial court has not ruled on relator's November 28, 2017 Motion to Compel Production of Judicial Orders, January 29, 2018 Request for Findings of Fact and Conclusions of Law regarding the January 18, 2018 denial of relator's Motion to Dismiss, and February 27, 2018 petition for writ of habeas corpus. Relator seeks a writ of mandamus directing the trial court to rule on the motion, request, and petition. We requested a response from the real party in interest, the State of Texas, and that response has now been filed. Because we conclude relator is not entitled to the relief requested, we deny the petition.

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). 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). Accordingly, to be entitled to mandamus relief compelling a trial court to rule on a motion, a relator must establish that the trial court (1) had a legal duty to rule on the motion because the motion was properly filed and timely presented, (2) was asked to rule on the motion, and (3) failed or refused to rule on the motion within a reasonable period of time. *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding). 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 its response to the petition for writ of mandamus, the State presented proof that relator’s November 28, 2017 motion to compel and each of relator’s outstanding motions are set for hearing on May 11, 2018 during the court’s pretrial conference. The trial court has broad discretion in managing its docket. *Ho v. Univ. of Texas at Arlington*, 984 S.W.2d 672, 694 (Tex. App.—Amarillo 1998, writ denied). No litigant is entitled to a hearing at whatever time he may choose. *In re Chavez*, 62 S.W.3d 225, 229 (Tex. App.—Amarillo 2001, orig. proceeding). The circumstances of the case dictate whether the trial court has ruled within a reasonable time. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding). Relator

has not shown that the trial court has delayed unreasonably or otherwise violated a ministerial duty to rule on the motion to compel or by setting the motion to compel for hearing at the pretrial conference. As for relator's request for findings of fact and conclusions of law and his petition for writ of habeas corpus, the trial court has not yet had a reasonable time to rule on those requests, and relator has not established that he has requested a hearing or ruling on those filings and the trial court has refused to rule. Relator is, therefore, not entitled to the relief requested here.

Accordingly, we deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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