DENY; and Opinion Filed March 22, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00296-CV

IN RE AARON EARL CARTER, JR., Relator

Original Proceeding from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F01-00923-Q

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Fillmore

In this original proceeding, relator complains of the trial court's failure to rule on an Article 11.08 Petition for Writ of Habeas Corpus, which relator states he filed on July 17, 2017.

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). Rules 52.3 and 52.7 require the relator to provide "a certified or sworn copy" of certain documents, including any order complained of, any other document showing the matter complained of, and every document that is material to the relator's claim for relief that was filed in any underlying proceeding. TEX. R. APP. P. 52.3(k)(1)(A), 52.7(a)(1).

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 Article 11.08 motion, relator requested a hearing and/or ruling on the motion, and 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). The only documents attached to relator's petition for writ of mandamus are non-certified, non-file-stamped copies of (1) an Article 11.08 habeas petition, and (2) a document titled "Notification to the Honorable Tammy Kemp" that purports to inform the trial court of relator's filing of the Article 11.08 motion and to ask for a ruling on that motion. Relator's unsworn declarations submitted with each document are insufficient to render the documents sworn copies of the originals because relator's statement that the documents were "true and correct to the best of my knowledge" did not establish personal

knowledge. *See In re Butler*, 270 S.W.3d 757, 759 (Tex. App.—Dallas 2008, orig. proceeding) (affiant's verification failed to establish personal knowledge that the copy of the order in the appendix is a correct copy of the original because affiant stated only that the copy was true and correct "to my knowledge," which is "an equivocal statement implying less than personal knowledge"). This record is insufficient to establish that the petition was properly filed and timely presented and that the trial court was asked to rule but failed to do so within a reasonable time. Accordingly, we deny relator's petition for writ of mandamus without prejudice to refiling a petition for writ of mandamus accompanied by a certified or sworn record demonstrating that relator properly filed and timely presented his motion with the trial court, relator asked for a ruling on his motion, the trial court refused or failed to rule on the motion within a reasonable time. *See* TEX. R. APP. P. 52.8(a); *In re Molina*, 94 S.W.3d at 886.

/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE

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