

Denied and Opinion Filed May 24, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00552-CV

IN RE MICHAEL DWAYNE WILLIAMS, Relator

Original Proceeding from the County Criminal Court No. 10
Dallas County, Texas
Trial Court Cause No. MA8359627

MEMORANDUM OPINION

Before Justices Francis, Evans, and Schenck
Opinion by Justice Evans

In this original proceeding, relator seeks a writ of mandamus directing the trial court to rule on an article 11.072 petition for writ of habeas corpus purportedly filed by relator in January 2018. We deny the petition because relator has not provided a sufficient record to establish his right to relief.

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 Timms*, No. 05–16–00129–CV, 2016 WL 542112, at *1 (Tex. App.—Dallas Feb. 11, 2016, orig. proceeding) (mem. op.); *see*

also *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.). A trial court has a reasonable time within which to consider a motion and to rule. *In re Craig*, 426 S.W.3d 106, 106-07 (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, 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 or refused to do so. *In re Keeter*, 134 S.W.3d 250, 252-53 (Tex. App.—Waco 2003, orig. proceeding); *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding); *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 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). 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 documents 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).

Although relator has included documents in his appendix in support of his petition, those documents are not file-stamped and are not otherwise certified or sworn as required by the rules. Relator's petition for writ of mandamus does not include a certified or sworn copy of the trial court's docket sheet and does not include a file-stamped, certified, or sworn copy of documents filed in the trial court relating to the article 11.072 petition for writ of habeas corpus. Without a certified or sworn copy of the trial court's docket sheet and without file-stamped, certified, or sworn copies of relator's application for writ of habeas corpus and of relator's letters to the trial court requesting a ruling on the application, this Court cannot discern whether those documents

were filed in the trial court, when they were filed, and whether the trial court has refused to rule on the application. The mandamus record, therefore, fails to establish relator filed the application for writ of habeas corpus, requested a hearing and/or ruling on the application for writ of habeas corpus, and the trial court has failed to act on relator's requests within a reasonable time. TEX. R. APP. P. 52.3(j), 52.3(k)(1)(a), 52.7(a). As such, relator has not established a violation of a ministerial duty and is not entitled to mandamus relief.

Accordingly, we deny relator's May 11, 2018 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).

/David Evans/
DAVID EVANS
JUSTICE

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