

Denied and Opinion Filed July 16, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00776-CV

IN RE LEE ARTHUR WYNN, Relator

Original Proceeding from the Criminal District Court No. 1
Dallas County, Texas
Trial Court Cause No. F12-24938H

MEMORANDUM OPINION

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

Before the Court is relator's July 6, 2018 petition for writ of mandamus in which he seeks a writ directing the trial court to hold a hearing on a nunc pro tunc motion purportedly filed by relator. A trial court has a ministerial duty to rule upon a properly filed and timely presented motion. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (orig. proceeding). To establish entitlement to mandamus relief for a trial court's refusal to act, the relator must establish that the trial court had a legal duty to perform a ministerial act, relator made demand for performance, and the court refused to perform. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979) (orig. proceeding); *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).

Relator has not met these requirements and is not entitled to mandamus relief. The mandamus record before us does not include a certified or sworn copy of the trial court's docket sheet or other proof that establishes relator filed the complained-of motions, relator requested either a hearing or a ruling, and the trial court has failed to rule on relator's motions. *See* TEX. R. APP. P. 52.3(k)(1)(a), 52.7(a). Accordingly, we deny relator's petition for writ of mandamus.

/Craig Stoddart/

CRAIG STODDART

JUSTICE

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