

DENIED and Opinion Filed August 17, 2020



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

No. 05-20-00682-CV

IN RE EMMIT BRAGER, Relator

**Original Proceeding from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F80-8698-MI**

MEMORANDUM OPINION

Before Chief Justice Burns and Justices Myers and Evans
Opinion by Justice Evans

In this original proceeding, Emmit Brager has filed a petition for writ of mandamus requesting the Court to compel the trial court to rule on a pending motion. Because relator's petition is insufficient to support mandamus relief, we deny the petition.

A petition seeking mandamus relief must include a certification stating that the relator "has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record." TEX. R. APP. P. 52.3(j). The certification must state substantially what is written in rule 52.3(j). *See In re Butler*, 270 S.W.3d 757, 758 (Tex. App.—Dallas 2008, orig. proceeding). In this case, relator has filed a certification stating only that the

necessary documents are included in the record from his direct appeal and in the trial court's records. Thus his certification does not meet the requirement of rule 52.3(j).

See id.

In addition to not properly certifying his petition, as his certification attests, relator has not filed any record to support his claims. He instead requests the Court waive the required record.

Relator bears the burden to provide the Court with a sufficient record to establish his right to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). To obtain mandamus relief compelling a trial court to rule on his motion, relator must show (1) the trial court had a legal duty to rule on the motion, (2) relator requested a ruling, and (3) the trial court failed or refused to do so. *In re Prado*, 522 S.W.3d 1, 2 (Tex. App.—Dallas 2017, orig. proceeding) (mem. op.). The trial court is required to rule on a motion within a reasonable time. *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding) (per curiam). Determining whether the trial court has had a reasonable time may involve consideration of criteria such as the trial court's actual knowledge of the matter, whether it has overtly refused to act on the matter, the state of the trial court's docket, and the existence of more pressing judicial and administrative matters. *See In re Chavez*, 62 S.W.3d 225, 228–29 (Tex. App.—Amarillo 2001, orig. proceeding). Relator bears the burden to provide the appellate court with evidence weighing on

the criteria to consider in assessing the reasonableness of the alleged delay. *Id.* at 229.

To meet his evidentiary burden, rule 52.3(k)(1)(A) requires the relator to file an appendix with his petition that contains “a certified or sworn copy of any order complained of, or any other document showing the matter complained of.” TEX. R. APP. P. 52.3(k)(1)(A). Rule 52.7(a)(1) requires the relator to file with the petition “a certified or sworn copy of every document that is material to the relator’s claim for relief that was filed in any underlying proceeding.” TEX. R. APP. P. 52.7(a)(1).

Without a record, relator cannot show that he filed the motion, requested a ruling, reminded the trial court that the motion was pending, or that the trial court refused to rule on the motion. *See Prado*, 522 S.W.3d at 2. Thus, relator cannot show he is entitled to mandamus relief. *See Butler*, 270 S.W.3d at 759.

We deny the petition for writ of mandamus.

/David Evans/

DAVID EVANS
JUSTICE

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