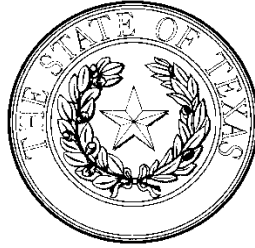


Opinion issued December 16, 2010



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00895-CR

IN RE MICHAEL JOHN VILLALOBOS, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Michael John Villalobos, has filed a pro se petition for writ of mandamus, asking this Court to direct respondent¹ to set a bond reduction hearing.

We deny the petition for writ of mandamus.

¹ Respondent is The Honorable David E. Garner of the 10th District Court, Galveston County, Texas.

Relator's petition does not meet the requirements of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 9.5 (requiring that certified copy be served on respondent); 52.3(k) (requiring certified or sworn copy of any order complained of or any other document showing matter complained of).

In addition, to establish that the trial court abused its discretion by failing to rule, the relator must show that the trial court (1) had a legal duty to perform a nondiscretionary act, (2) was asked to perform that act, and (3) failed or refused to do so. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding). Specifically, the relator must show that the trial court received the motion, was aware of it, and was asked to rule on the motion. *Id.* Here, relator has not provided us with a record showing that the trial court received his motion, was aware of it, was asked to rule on it, and refused to rule. *See id.*

Accordingly, we deny the petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Bland and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).