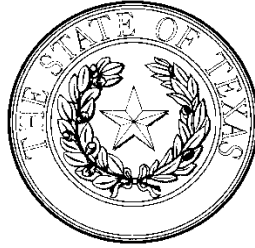


Opinion issued December 16, 2010.



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-01009-CR

IN RE REGINALD MYLES, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Reginald Myles, has filed a pro se petition for writ of mandamus, asking this court to direct respondent to either “set aside” or “expunge” his conviction.¹ We deny the petition for writ of mandamus.

¹ Respondent is the Honorable Mark Atkinson of County Criminal Court at Law No. 13 of Harris County, Texas. The underlying case is *State v. Reginald Myles*, No. 1246338 (County Criminal Court at Law No. 13, Harris County, Texas).

To establish that the trial court has abused its discretion by failing to act, 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 a motion, was aware of it, and was asked to rule on the motion. *Id.*

Relator has not provided us with a record demonstrating that he has presented a motion to the trial court and has requested a ruling, and that the trial court failed or refused to rule. *See id.* Further, relator's petition does not meet the requirements of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 52.3(k) (requiring certified or sworn copy of any order complained of or any other document showing matter complained of).

Accordingly, we deny the petition for writ of mandamus. All pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Jennings, Alcala, and Sharp.

Do not publish.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