

Opinion issued March 3, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00012-CR

IN RE JERRY WIGFALL, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Jerry Wigfall, who is represented by counsel in the court below, has filed a pro se petition for writ of mandamus, asking this court to direct respondent¹ to rule on his pro se motions or, in the alternative, to dismiss the pending underlying case. We deny the petition for writ of mandamus.

¹ Respondent is The Honorable Mark Kent Ellis of the 351st District Court, Harris County, Texas.

To establish that the trial court abused its discretion by failing to rule, a 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). The relator must show that the trial court received a motion, was aware of it, and was asked to rule, but failed or refused. *Id.*

Relator complains that the trial court failed or refused to rule on eight motions, however, relator appended only four of the motions to his petition. *See* TEX. R. APP. P. 52.3(k). The motions are not file-stamped, and relator has not provided any other proof that his motions are actually pending in the trial court. *See* TEX. R. APP. P. 52.7(a)(1). The motions do not have certificates of service showing when they were mailed to the trial court. *See In re Villarreal*, 96 S.W.3d 708, 710–11 (Tex. App.—Amarillo 2003, orig. proceeding). Further, relator has not shown that the trial court was aware of the motions and was asked to rule on them, but failed or refused. *See Barnes*, 832 S.W.2d at 426.

Relator requests, in the alternative, that the pending underlying case be dismissed. To be entitled to mandamus relief, a relator must show that he has no adequate remedy at law to redress his alleged harm and that he seeks to compel a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210

(Tex. Crim. App. 2007) (orig. proceeding). By his petition, relator does not offer any basis for his request or demonstrate that he is entitled to such relief.

Accordingly, we deny the petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Jennings, Higley, and Brown.

Do not publish.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