

Opinion issued August 4, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00420-CR

NO. 01-11-00421-CR

NO. 01-11-00422-CR

NO. 01-11-00423-CR

NO. 01-11-00542-CR

NO. 01-11-00543-CR

IN RE RONNIE WAYNE JACKSON, Relator

Original Proceeding on Petition for Writ of Mandamus

CONCURRING OPINION

I concur in the denial of mandamus relief in this case, but write to set forth the reason why denial is appropriate: Neither of relator's two petitions for writ of

mandamus complies with the Texas Rules of Appellate Procedure.

Relator's first petition is defective because it lacks proof that relator served all parties to this original proceeding with a copy of the petition. *See* TEX. R. APP. P. 9.5 (setting forth service requirements for all documents presented to court). In addition, the first petition was not accompanied by any documents supporting relator's claim that the trial court refuses to rule on his applications for writs of habeas corpus, such as copies of the pending writ applications and any requests that the trial judge rule on those applications. *See* TEX. R. APP. P. 52.7(a) (requiring that relator file mandamus record containing certified or sworn copies of all documents material to claim for relief).

Relator's second petition, i.e., the petition complaining about improper calculation of jail-time credit, also suffers from an insufficient record. *See id.* Although relator attached some documents to his second petition, other documents material to his claim for relief are missing. For instance, relator has not provided the Court with copies of the motions seeking additional jail-time credit and any requests for a ruling on those motions.

Before a writ of mandamus may issue in a criminal matter, the relator must establish that the trial court (1) had a legal duty to perform a non-discretionary act, (2) was asked to perform the act, and (3) failed or refused to do so. *See Ex parte Lewis*, 196 S.W.3d 404, 405 n.2 (Tex. App.—Fort Worth 2006, no pet.); *In re*

Chavez, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding).

Given the deficiencies in relator's petitions, we cannot determine whether any of these things have occurred.

For these reasons, I join the majority in denying relator's petitions for writ of mandamus.

Jim Sharp
Justice

Panel consists of Chief Justice Radack and Justices Sharp and Brown.

Justice Sharp, concurring.

Do not publish.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