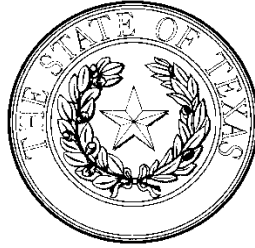


Opinion issued September 15, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00744-CR

IN RE DENNIS FEATHERSTON, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Dennis Featherston, has filed a pro se petition for writ of mandamus in this court. *See* TEX. GOV'T CODE § 22.221 (Vernon 2004); *see also* TEX. R. APP. P. 52. Relator complains that respondent^{*} has not ruled on his motion for judgment

* Respondent is The Honorable Joan Campbell of the 248th District Court, Harris County, Texas. Relator informs us that this original proceedings arises out of Cause No. 1294217, styled *State of Texas v. Dennis Featherston*, pending in the

nunc pro tunc to grant him additional pre-sentence jail time credit. *See Ex parte Ybarra*, 149 S.W.3d 147, 148–49 (Tex. Crim. App. 2004) (holding that appropriate procedural vehicle to obtain pre-sentence jail time credit is to present issue to trial court by way of a nunc pro tunc motion and, if trial court fails to respond, to seek mandamus relief in court of appeals).

To obtain mandamus relief, relator must establish that the act sought to be compelled is ministerial and that he has no adequate remedy at law. *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). Consideration of a motion that is properly filed and before the court is a ministerial act. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (orig. proceeding). 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. *See Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding).

Specifically, a relator must show that the trial court received the motion, was aware of it, and was asked to rule on the motion. *See id.* Here, relator has attached a copy of the motion for judgment nunc pro tunc, which he claims to have filed in the trial court on August 19, 2011. However, relator has not provided this court

248th District Court, Harris County, Texas, the Honorable Joan Campbell, presiding.

with a file-stamped copy of the motion or any other documents to show that a properly filed motion is pending before the trial court. *See id;* *see also* 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, to be included in appendix); TEX. R. APP. P. 52.7(a) (providing that relator must file with petition certified or sworn copy of every document that is material to relator's claim for relief and that was filed in any underlying proceeding).

In addition, 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 Barnes*, 832 S.W.2d at 426. All petitioners for writ of mandamus, including those acting pro se, must furnish a record sufficient to support the claim for mandamus relief. *See id.*; *see also* TEX. R. APP. P. 52.3(k), 52.7(a); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992).

Furthermore, a trial court has a reasonable time to perform the ministerial duty of considering and ruling on a motion properly filed and before the court. *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding). Relator filed his mandamus petition in this court on August 29, 2011. If we accept as true his statement in his mandamus petition, relator filed his petition in this court 10 days after he filed his motion for judgment nunc pro tunc in the trial court on August 19, 2011. Implicitly, relator contends that 10 days is a reasonable time for

the trial court to rule on the motion for judgment nunc pro tunc. However, relator has not explained why a 10-day period is a reasonable time. *See Barnes*, 832 S.W.2d at 426 (concluding what constitutes reasonable time is dependent on circumstances of each case).

Accordingly, we deny the petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a).

Laura Carter Higley
Justice

Panel consists of Justices Keyes, Higley, and Brown.

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