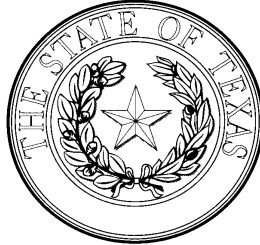


Opinion issued October 22, 2020



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-20-00129-CR

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IN RE EBONY SCOTT, Relator

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Original Proceeding on Petition for Writ of Mandamus

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**MEMORANDUM OPINION**

Relator, Ebony Scott, has filed a petition for writ of mandamus, claiming that the trial court violated a ministerial duty to dismiss the charges against him and to discharge him.<sup>1</sup> We conditionally grant the writ.

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<sup>1</sup> The underlying case is *The State of Texas v. Ebony Scott*, cause number 1495385, pending in the 232nd District Court of Harris County, Texas, the Honorable Josh Hill presiding.

Scott was charged with the felony offense of aggravated assault of a family member. Scott entered into a plea bargain agreement with the State in which the State agreed to reduce the charge to a Class A misdemeanor offense of terroristic threat and Scott agreed to a one-year term of deferred adjudication community supervision. On March 7, 2017, the trial court entered an order of deferred adjudication in accordance with the plea bargain.

On April 9, 2018, the trial court signed an order terminating Scott's community supervision and ordering Scott discharged. On November 5, 2019, Scott filed a request for an order of dismissal on the ground that he had completed his deferred adjudication and the trial court had entered an order discharging him. A hearing was held on November 19, 2019. On December 30, 2019, relator filed another request for a ruling. Relator then filed this petition for writ of mandamus asking that we compel the trial court to issue an order of dismissal.

We requested a response from the State and the State agrees that the trial court has a ministerial duty to issue an order of dismissal under Article 42A.111(a) and that mandamus relief should be granted. Article 42A.111 provides:

On expiration of a period of deferred adjudication community supervision imposed under this subchapter, if the judge has not proceeded to an adjudication of guilt, the judge shall dismiss the proceedings against the defendant and discharge the defendant.

TEX. CODE CRIM. PROC. ANN. art. 42A.111(a).

Because this statute uses the word “shall,” it imposes a mandatory, ministerial duty to dismiss the proceedings against the defendant when the conditions stated in the statute have been met. *See In re Ruckman*, No. WR-90,175–01, 2019 WL 4316836, at \*1 (Tex. Crim. App. Sept. 11, 2019) (conditionally granting mandamus relief and ordering relator discharged where trial court had not dismissed proceedings and discharged relator after he completed his deferred adjudication probation); *In re Leger*, 598 S.W.3d 469, 471 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding) (“Under the mandatory language of this provision, a trial court has a ministerial duty to dismiss the underlying criminal charges against a defendant upon completion of the term of deferred adjudication community supervision.”).

The trial court has a ministerial duty to dismiss the charges against relator and discharge him pursuant to Article 42A.111(a). Accordingly, we conditionally grant the writ and order the trial court to comply with Article 42A.111(a) and dismiss the charges against Scott and discharge him. We are confident that the respondent will comply with this opinion and the writ will issue only if he does not.

**PER CURIAM**

Panel consists of Justices Kelly, Goodman, and Countiss.

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