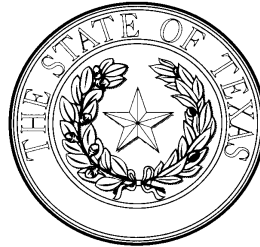


Opinion issued February 8, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00050-CR

IN RE DEVONTE BARNES, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Devonte Barnes, incarcerated and proceeding pro se, has filed a petition for a writ of mandamus requesting that this Court compel the trial court to “present written ruling on all motions, grant P.R. bond, set aside indictment, dismiss pending charge, bond reduction, right to speedy trial, and right to court appearance.”

We deny relator’s petition for writ of mandamus.¹

A trial court has a ministerial duty to consider and rule on motions that are properly filed and pending before the court. *See In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding). And where a trial court refuses to rule on such a motion, mandamus relief may be appropriate. *See In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding). However, to establish that he is entitled to mandamus relief, relator must establish that: (1) the trial court had a legal duty to rule on the motion, (2) relator made a demand for the trial court to rule on the motion, and (3) the trial court failed or refused to rule on the motion within a reasonable time. *See In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding).

Texas Rule of Appellate Procedure 52.3 outlines the pleading and record requirements for original proceedings, including petitions for writ of mandamus, filed in Texas appellate courts. *See* TEX. R. APP. P. 52.3. Relator’s mandamus petition states that “[d]uring the time frame of incarceration[,] relator [has] filed several motions and made several attempts to reach the court[.]” in his criminal case. Despite relator’s assertion, relator’s mandamus petition does not specifically identify what motions he purportedly filed with the trial court, when any such motions were

¹ The underlying case is *Devonte Barnes v. The State of Texas*, Cause No. 1659460, in the 338th District Court of Harris County, Texas, the Honorable Ramona Franklin presiding.

filed, or who filed such motions. Further, relator’s mandamus petition fails to include an appendix or record which establishes that he is entitled to the relief he seeks in this Court. *See* TEX. R. APP. P. 52.3(k) (relator required to provide appendix which “must contain” certified or sworn copy of any “document showing the matter complained of”), 52.7 (relator “must file” record with mandamus petition containing “certified or sworn copy of every document that is material to the relator’s claim for relief and that was filed in any underlying proceeding”), 52.8; *see also Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (relator must provide mandamus record sufficient to establish right to mandamus relief).

Specifically, relator’s petition for writ of mandamus fails to provide a record or appendix including any of the motions relator purportedly filed, or any request, filed by relator, demanding that the trial court rule on such motion. Absent such evidence from relator, “we have no basis to determine that [any] motions were properly brought” to the attention of the trial court, thus creating a ministerial duty to act. *In re Molina*, 94 S.W.3d at 886. And we are unable to determine whether the trial court has abused its discretion by failing or refusing to act on relator’s motion(s).² *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding).

² In his mandamus petition, relator states that his court-appointed trial counsel is his “now former attorney” because he “pushe[ed] to get her withdrawn from his case.” The mandamus record does not reflect whether relator’s court-appointed trial

Accordingly, we deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a). We dismiss any other pending motions as moot.

PER CURIAM

Panel consists of Justices Hightower, Countiss, and Guerra.

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counsel has withdrawn, and, if so, whether new counsel has been appointed by the trial court. However, to the extent relator has court-appointed trial counsel, we note that criminal defendants are generally not entitled to hybrid representation and a “trial court is free to disregard any pro se motions presented by a defendant who is represented by counsel.” *Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007). As such, “a trial court’s decision not to rule on a pro se motion” is not “subject to review.” *Id.*