

Opinion issued July 26, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00349-CR

IN RE ARMANDO RAMOS-CASTRO, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator Armando Ramos-Castro complains that the trial court has not ruled on his motion for judgment nunc pro tunc.¹ We deny relief.

Relator claims that he filed a motion for nunc pro tunc on February 9, 2022, and he attaches a copy of a United State Post Office return receipt showing that a

¹ The underlying case is *Armando Ramos-Castro v. The State of Texas*, cause number 74812, pending in the 412th Judicial District Court of Brazoria County, Texas, the Honorable Justin R. Gilbert presiding.

filing was addressed to the Brazoria County District Clerk and was received on February 9, 2022. Relator claims that no ruling has been made.

“To be entitled to mandamus relief, a relator must show (1) that the relator has no adequate remedy at law for obtaining the relief the relator seeks; and (2) what the relator seeks to compel involves a ministerial act rather than a discretionary act.” *In re Gomez*, 602 S.W.3d 71, 73 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding). If the party properly files the motion with the trial court, the court has a ministerial duty to rule within a reasonable time after the motion was submitted for a ruling or after the party requested a ruling. *See In re Flanigan*, 578 S.W.3d 634, 635–36 (Tex. App.—Houston [14th Dist.] 2019, orig. proceeding).

To obtain mandamus relief for the trial court’s alleged failure to rule, the relator must provide a record that shows “(1) the motion was filed and brought to the attention of the respondent-judge for a ruling, and (2) the respondent-judge has not ruled on the motion within a reasonable time after the motion was submitted to the court for a ruling or after the party requested a ruling.” *Gomez*, 602 S.W.3d at 73.

As the party seeking mandamus, relator has the burden of providing a sufficient record to establish his right to mandamus relief. *See In re Pete*, 589 S.W.3d 320, 321 (Tex. App.—Houston [14th Dist.] 2019, orig. proceeding). Although relator has provided a return receipt for an unidentified filing, he has not

provided a file-stamped copy of a motion nunc pro tunc establishing that the motion was properly filed. *See id.* And merely showing that a motion was filed is not sufficient to impute the clerk’s knowledge of the filing to the trial court. *See id.* at 322 (citing *In re Craig*, 426 S.W.3d 106, 107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding) (“The mere filing of a motion with the trial court clerk does not equate to a request that the trial court rule on the motion.”)). The trial court has no duty to consider a motion not called to its attention either by submission or by a request for a ruling. *See In re Henry*, 525 S.W.3d 381, 382 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding). Because relator has not provided proof of the filing of a motion nunc pro tunc or that he brought any such motion to the trial court’s attention by proper means, he has not provided a sufficient record to establish his entitlement to mandamus relief.

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

PER CURIAM

Panel consists of Justices Kelly, Countiss, and Rivas-Molloy.

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