

Opinion issued December 6, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00858-CR

IN RE DEANDRE DEBOEST, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, DeAndre DeBoest, incarcerated and proceeding pro se, has filed a petition for a writ of mandamus asserting that the trial court has “fail[ed] to perform a ministerial function,” namely, to dismiss the complaint issued against him for the felony offense of retaliation.¹ Relator’s mandamus petition requests that this Court issue a writ of mandamus directing the trial court to “dismiss th[e] complaint for no

¹ See TEX. PENAL CODE ANN. § 36.06.

probable cause, warrantless and unreasonable search and seizure, and falsified police report.”

We deny relator’s petition for writ of mandamus.²

At the outset, we note that 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 Henry*, 525 S.W.3d 381, 382 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding). Where a trial court refuses to rule on such a motion, mandamus relief may be appropriate. *Id.* However, to establish that he is entitled to mandamus relief, relator must establish that the trial court: (1) had a legal duty to rule on a properly filed motion, (2) was asked to rule on the motion, and (3) has 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).

Relator’s petition for writ of mandamus argues that the trial court’s failure to dismiss the complaint against him “is a failure to perform a ministerial function, under the facts of th[e] case, because under the Fourth Amendment, a warrantless search and seizure of either a person or property is considered per se unreasonable.” Notably, however, relator’s mandamus petition does not identify any motion, or other pleading, filed in the trial court by relator, in which relator sought this

² The underlying case is *DeAndre DeBoest v. The State of Texas*, Cause No. 1792110, in the 232nd District Court of Harris County, Texas, the Honorable Josh Hill presiding.

requested relief, or for which the trial court has failed to rule. This alone is sufficient to warrant denial of relator's petition for writ of mandamus.

Further, Texas Rule of Appellate Procedure 52 outlines the pleading and record requirements for original proceedings, including petitions for writ of mandamus, filed in Texas appellate courts. *See generally* TEX. R. APP. P. 52. As noted above, relator's mandamus petition fails to identify any motion or pleading which the trial court has not ruled on or otherwise considered. It naturally follows therefore that relator's mandamus petition does not include an appendix or record which would establish he is entitled to the relief sought by 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 mandamus petition fails to provide a record including any motion or other pleading for which the trial court has failed to rule. Without such a record from relator, we cannot conclude that the trial court had a ministerial duty to act as requested in relator's mandamus petition. *In re Florence*,

14-11-00096-CR, 2011 WL 553241, at *1 (Tex. App.—Houston [14th Dist.] Feb. 17, 2011, orig. proceeding) (mem. op., not designated for publication).

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

PER CURIAM

Panel consists of Justices Goodman, Hightower, and Guerra.

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