

Petition for Writ of Mandamus Denied and Memorandum Opinion filed March 16, 2010



In The

**Fourteenth Court of Appeals**

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NO. 14-10-00130-CR

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IN RE MARSHALL A. WASHINGTON, Relator

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ORIGINAL PROCEEDING  
WRIT OF MANDAMUS

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**MEMORANDUM OPINION**

February 10, 2010, relator, Marshall A. Washington, filed a petition for writ of mandamus in this Court. *See* Tex. Gov't Code Ann. § 22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this Court to compel the Honorable Joan Campbell, presiding judge of the 248th District Court of Harris County, to rule on his motion for nunc pro tunc order to correct a clerical error in a pre-sentence investigation report.

To be entitled to mandamus relief, a relator must show that he has no adequate remedy at law to redress his alleged harm, and what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. *State ex rel. 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) (op. on reh'g). A relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed to do so. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding). A relator must show that the trial court received, was aware of, and asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). Filing something with the district clerk's office does not mean the trial court is aware of it; nor is the clerk's knowledge imputed to the trial court. *Id.* at n.2. The trial court has a reasonable time in which to perform its ministerial duty. *Ex parte Bates*, 65 S.W.3d 133, 135 (Tex. App.—Amarillo 2001, orig. proceeding).

On June 15, 2009, relator filed a letter in the trial court, claiming that the presentence investigation report contained a factual error, and stating that “Your help in this matter will be deeply appreciated.” On August 10, 2009, relator filed his motion for nunc pro tunc order in the trial court. Relator argues that the June 15, 2009 letter to the trial court demonstrates that it received, was aware of, and was asked to rule on the motion. However, relator could not have brought his motion for nunc pro tunc order to the trial court's attention by this letter, which does not reference the motion, because relator filed the letter nearly two months before he filed his motion. Therefore, relator has not shown that the trial court received, was aware of, and was asked to rule on his motion for nunc pro tunc order.

Absent a showing that he has made the trial court aware of his motion and asked for a ruling on that motion, relator has not established his entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Frost, Boyce, and Sullivan.

Do Not Publish — Tex. R. App. P. 47.2(b).