

Petition for Writ of Mandamus Denied and Memorandum Opinion filed March 2, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00144-CR

IN RE ERIC DAVID LOFLAND, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On February 18, 2010, relator 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 asked this court to compel the Honorable Jan Krockner, presiding judge of the 184th District Court of Harris County, to rule on his "Ex Parte Motion to Produce Viewable Crime Scene Photos for Subsequent § 11.07, Actual Innocence."

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. Young 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 rule. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding). A relator must show that the trial court received or was asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

The motion is attached to relator's petition. The certificate of service indicates it was mailed July 6, 2009. However, the motion does not bear the file stamp of the Harris County District Clerk.¹ Therefore relator has not demonstrated the motion was actually filed, and is pending, in the trial court.

Relator has not established he is entitled to mandamus relief. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Hedges, Justices Anderson and Christopher.

Do Not Publish — Tex.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

¹ Relator claims he mailed the motion and requested a file-stamped copy of his motion and sent relatives to the clerk's office to check on the motion, to no avail. It appears the motion may have been lost or misplaced and relator should re-file the motion in the trial court, requesting a ruling.