

Petition for Writ of Mandamus Denied and Memorandum Opinion filed September 30, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00903-CR

IN RE JACK W. CHISUM, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On September 21, 2010, relator Jack W. Chisum, 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 Marc Brown, presiding judge of the 180th District Court of Harris County, to forward his writ of habeas corpus to the Court of Criminal Appeals.

Relator has not established his entitlement to the extraordinary relief of a writ of mandamus. Consideration of a motion or other request 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). A relator must establish the trial court (1) had a legal

duty to rule; (2) was asked to rule; and (3) failed to do so. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding).

According to relator's petition, he filed a "Post Conviction Writ of Habeas Corpus for (DNA TESTING)" on September 14, 2004, in the trial court. Relator contends that the trial court has neither ruled on his post-conviction request for a writ, nor forwarded it to the Court of Criminal Appeals. Relator did not attach a file-stamped copy of his writ request demonstrating it is actually pending in the trial court. Relator has provided this court with no other record showing he filed a writ request with the trial court or that the court had a ministerial duty to forward it to the Court of Criminal Appeals. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Brown.

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