

Petition for Writ of Mandamus Denied and Memorandum Opinion filed October 14, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00930-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. Relator asked 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. On September 30, 2010, the petition was denied because relator did not provide this court with any evidence his writ was actually pending in the trial court.

Appellant has filed an affidavit in support of his previously filed petition. The affidavit concerns the merits of appellant's writ of habeas corpus. It does not establish relator's entitlement to the extraordinary relief of a writ of mandamus. 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). 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).

Relator did not attach a file-stamped copy of his writ demonstrating it is actually pending in the trial court. Relator has provided this court with no other record showing he filed a writ with the trial court or that the court had a ministerial duty to forward it to the Court of Criminal Appeals. Accordingly, we deny relators' petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Seymore, Boyce, and Christopher.

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