

Petition for Writ of Mandamus Denied and Memorandum Opinion filed November 18, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-01097-CR

IN RE CALVIN EDWARD WEAVER, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

Relator Calvin Edward Weaver seeks issuance of a writ of mandamus directing the presiding judge of the 230th District Court in Harris County to respond to his petition to reopen his final conviction for aggravated sexual assault of a child. *See Weaver v. State*, 2000 WL 63997, No. 14-98-00243-CR (Tex. App.—Houston [14th Dist.] Jan. 27, 2000, pet. ref'd) (not designated for publication). He asserts that he mailed a “Motion for Leave to Proceed,” “Petition to the Court to Reopen,” and “Memorandum and Conclusion of Law, Findings of Fact in support of attached Petition to the Court to Reopen” to the trial court and he has not received a response.

To be entitled to mandamus relief, a relator must show that he has no adequate remedy at law to redress his alleged harm, and that 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). A relator must establish 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); *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding) (relator must show that trial court received, was aware of, and was asked to rule on motion).

It appears that relator's request relates to post-conviction relief from an otherwise final felony conviction. Only the Texas Court of Criminal Appeals has jurisdiction over matters related to post-conviction relief from a final felony conviction. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. 1991); *see also* Tex. Code Crim. Proc. Ann. art. 11.07; *Board of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995) (holding that article 11.07 provides the exclusive means to challenge a final felony conviction).

We are unable to ascertain the nature of the relief relator seeks, however. Relator has not provided this court with copies of the motions on which he seeks a ruling. It is relator's burden to provide this court with a record sufficient to establish his right to relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); Tex. R. App. P. 52.3(k), 52.7(a). Relator has not established that the motions were properly filed and that the trial court was asked to rule on them but failed to do so.

Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Seymore.

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