

Petition for Writ of Mandamus Denied and Memorandum Opinion filed February 17, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00096-CR

IN RE THOMAS FLORENCE, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
County Court at Law No. 3
Galveston County, Texas
Trial Court Cause No. 033026670101

MEMORANDUM OPINION

On November 3, 2010, relator Thomas Florence filed petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. §22.221; *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Roy Quintanilla, presiding judge of the Galveston County Court at Law No. 3, to rule on his motion for a speedy trial filed in the above referenced cause number.

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). A defendant seeking to compel the dismissal of an indictment or complaint on speedy trial grounds has an adequate remedy at law, and therefore, is not entitled to mandamus. *Smith v. Gohmert*, 962 S.W.2d 590, 593 (Tex. Crim. App. 1998).

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 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). The record before this court is insufficient to establish that the motion was properly filed and that the trial court was requested to rule on it.¹ Absent proof that the trial court has been requested to rule on the motion, relator has not established his entitlement to the extraordinary relief of a writ of mandamus.

Accordingly, relator's petition is denied.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Frost and Christopher.

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¹ The motion attached to relator's petition contains cause number 03326670101 in the style of the case. The letter to the clerk refers to cause numbers 033026670101 and 033026520101. The letter contains no reference to the style of the case or any information identifying relator other than an illegible signature.