

Petition for Writ of Mandamus Denied and Memorandum Opinion filed August 25, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00692-CR

IN RE JACKIE WAYNE NEWSOME, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
240th District Court
Fort Bend County, Texas
Trial Court Cause No. 53636

MEMORANDUM OPINION

On August 12, 2011, relator Jackie Wayne Newsome filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Relator complains that respondent, the Honorable Thomas Culver, presiding judge of the 240th District Court of Fort Bend County, has not ruled on his motion for judgment nunc pro tunc to grant him additional pre-sentence jail time credit. *See Ex parte Ybarra*, 149 S.W.3d 147, 148–49 (Tex. Crim. App. 2004).

To be entitled to mandamus relief in a criminal case, 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).

Relator states that he filed a motion for judgment nunc pro tunc on August 3, 2011. There is no indication in the record before this court that the motion for judgment nunc pro tunc was filed in the trial court. There is no file mark on the motion. *See* Tex. R. App. P. 52.7(a)(1) (requiring certified or sworn copy of every document material to relator’s claim for relief to be filed with petition for writ of mandamus). 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. Furthermore, the record does not include any documentation verifying the dates and events alleged to be the basis of relator’s time-credit claim. A relator must furnish a record sufficient to support his claim for mandamus relief. *See* Tex. R. App. P. 52.3(k), 52.7(a); *see also Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992).

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

PER CURIAM

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

Do Not Publish — Tex.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