

Petition for Writ of Mandamus Denied and Memorandum Opinion filed August 23, 2011.



In The

**Fourteenth Court of Appeals**

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NO. 14-11-00694-CR

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**IN RE JOSEPH LIDDEL POYSINGER, Relator**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
228th District Court  
Harris County, Texas  
Trial Court Cause No. 1218874**

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**MEMORANDUM OPINION**

On August 15, 2011, relator Joseph Liddel Paysinger filed a 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 Marc Carter, presiding judge of the 228th District Court of Harris County to rule on his motion for judgment nunc pro tunc.

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). A relator must show that the trial court received, was aware of, and asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). Relator did not attach a file-stamped copy of his motion demonstrating it is actually pending in the trial court.

Relator has not established entitlement to the extraordinary relief of a writ of mandamus. He has not provided this court with a record showing that the 228th District Court received the motion for judgment nunc pro tunc, was aware of it, was asked to rule on it, and refused to rule. Accordingly, we deny relator's petition for writ of mandamus

PER CURIAM

Panel consists of Justices Frost, Seymore, and Jamison.

Do Not Publish — TEX. R. APP. P. 47.2(b).