

Petition for Writ of Mandamus Denied and Memorandum Opinion filed September 13, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00733-CR

IN RE MICHAEL E. CARTER, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
263rd District Court
Harris County, Texas
Trial Court Cause No. 1171837

MEMORANDUM OPINION

On August 25, 2011, relator 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 complains that respondent, the Honorable L. Jim Wallace, presiding judge of the 263rd District Court of Harris County, without conducting a hearing, denied his motion for a “temporary loan” of the record in trial court cause number 1171837 for the purpose of filing an application for writ of habeas corpus. Relator asks that we compel the trial court to either conduct a hearing on his motion or grant his motion.

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). Thus, a district court may be compelled via mandamus to consider and rule on a pending motion presented to the court. *Gray*, 726 S.W.2d at 128. Mandamus, however, will not issue to compel a particular result in a discretionary decision on a motion. *Id.*

Relator's motion has been heard and ruled on by the trial court. The ruling on the motion is within the trial court's discretion. *See Gray*, 726 S.W.2d at 128.

Alternatively, relator requests that we direct the trial court to hold a hearing on his motion. Texas Code of Criminal Procedure article 11.07 governs the procedure for obtaining post-conviction relief from a final felony conviction. *See Tex. Code Crim. Proc. Ann. art. 11.07* (West Supp. 2010). Article 11.07 provides no role for the courts of appeals in this process. *See id.* Accordingly, we are without jurisdiction to order the trial court to conduct a hearing on relator's motion.

Because relator has failed to establish his entitlement to the mandamus relief requested, we deny the petition.

PER CURIAM

Panel consists of Justices Brown, Boyce, and McCally.

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