

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



In The

Fourteenth Court of Appeals

NO. 14-11-00745-CR

IN RE INIYBONG EBONG, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
351st District Court
Harris County, Texas
Trial Court Cause No. 1286755**

MEMORANDUM OPINION

On August 29, 2011, relator Iniybong Ebong 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 Mark Ellis, presiding judge of

the 351st District Court of Harris County to rule on his pretrial application for writ of habeas corpus.

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 was 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 pretrial application 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 351st District Court received the application for writ of habeas corpus, 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.

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