

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



In The

**Fourteenth Court of Appeals**

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NO. 14-11-00971-CR

NO. 14-11-00972-CR

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IN RE ROBERT MORENO, JR., Relator

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ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
263rd District Court  
Harris County, Texas  
Trial Court Cause Nos. 0807407 & 0807408

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**MEMORANDUM OPINION**

On November 7, 2011, relator Robert Moreno, Jr. 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 Jim Wallace, presiding judge of the 263rd District Court of Harris County, has not ruled on his motion for post-conviction forensic DNA testing. *See* Tex. Code Crim. Proc. art. 64.01—64.05.

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 has not provided this court with any evidence that his motion for DNA testing was properly filed with the trial court and presented to the judge for a ruling. 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).

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Do Not Publish — Tex.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).