

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
February 4, 2016.**



In The

Fourteenth Court of Appeals

NO. 14-16-00054-CR

IN RE LOYD LANDON SORROW, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
263rd District Court
Harris County, Texas
Trial Court Cause No. 874978**

MEMORANDUM OPINION

On January 25, 2016, relator Loyd Landon Sorrow filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Jim Wallace, presiding judge of the 263rd District Court of Harris County, to rule on his motion for new trial for a new fact found after final judgment.

A trial court has a ministerial duty to consider and rule on motions properly filed and pending before it, and mandamus may issue to compel the trial court to act. *In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding); *Ex parte Bates*, 65 S.W.3d 133, 134 (Tex. App.—Amarillo 2001, orig. proceeding). To be entitled to mandamus relief compelling a trial court to rule on a properly filed motion, relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed or refused to rule on the motion within a reasonable time. *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding); *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding).

First we address whether the trial court has jurisdiction to rule on relator’s motion for new trial for a new fact found after final judgment. Without jurisdiction, a trial court would have no legal duty to rule on the motion. The trial court does not have “inherent” jurisdiction. *State v. Patrick*, 86 S.W.3d 592, 596 (Tex. Crim. App. 2002) (plurality op.). Rather, the trial court derives its jurisdiction from either the Texas Constitution or by legislative enactment. *Staley v. State*, 420 S.W.3d 785, 795 (Tex. Crim. App. 2013).

“When a conviction has been affirmed on appeal and the mandate has issued, general jurisdiction is not restored in the trial court.” *State v. Patrick*, 86 S.W.3d 592, 594 (Tex. Crim. App. 2002). This court affirmed relator’s conviction for aggravated sexual assault of a child on August 26, 2003, and the Texas Court of Criminal Appeals refused to grant relator’s petition for discretionary review on February 11, 2004. *See Sorrow v. State*, No. 14-02-01042-CR, 2003 WL

22012828 (Tex. App.—Houston [14th Dist.] Aug. 26, 2013, pet. ref'd) (not designated for publication).

Relator relied on Article 40.001 of the Texas Code of Criminal Procedure when he filed his motion for new trial. Article 40.001 provides that “[a] new trial shall be granted an accused where material evidence favorable to the accused has been discovered since trial.” Tex. Code Crim. Proc. Ann. art. 40.001 (West 2006). Article 40.001 contains no time constraints. However, under Texas Rule of Appellate Procedure 21.4(a), a motion for new trial must be filed within thirty days of the imposition of sentence. Tex. R. App. P. 21.4(a). Rule 21.4(a) applies to an article 40.001 motion for new trial. *In re R.V., Jr.*, 8 S.W.3d 692, 693 (Tex. App.—Fort Worth 1999, pet. denied). The fact that the motion for new trial is based on newly discovered evidence has no impact on the appellate time table. *Licon v. State*, 99 S.W.3d 918, 926 (Tex. App.—El Paso 2003, no pet.); *Mercier v. State*, 96 S.W.3d 560, 562 (Tex. App.—Fort Worth 2002, pet. stricken).

“In general, . . . [a trial court] does not have a duty to rule on free-floating motions unrelated to currently pending actions. In fact, it has no jurisdiction to rule on a motion when it has no plenary jurisdiction coming from an associated case.” *In re Cash*, No. 06-04-00045-CV, 2004 WL 769473, *1 (Tex. App.—Texarkana Apr. 13, 2004, orig. proceeding) (mem. op.); *see also In re Thompson*, No. 14-14-00247-CV, 2014 WL 1482486, *2 (Tex. App.—Houston [14th Dist.] Apr. 15, 2014, orig. proceeding) (mem. op. per curiam) (“In the absence of plenary power, the trial court had no legal duty to rule on relator’s motion . . .”).

Therefore, in the absence of a statute providing the trial court with jurisdiction over relator's motion for new trial for a new fact found after judgment, the trial court does not have jurisdiction over relator's motion and no legal duty to rule on it.

Relator has not established that he is entitled to a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Jamison, Donovan, and Brown.
Do Not Publish — Tex. R. App. P. 47.2(b).