

Petition for Writ of Mandamus Denied and Memorandum Opinion filed January 12, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-01024-CR

IN RE JOE L. GONZALES, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
184th District Court
Harris County, Texas
Trial Court Cause No. 1524253**

MEMORANDUM OPINION

On December 29, 2016, relator Joe L. Gonzales 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 Jan Krockner, presiding judge of the 184th District Court of Harris County, to enter a finding in the judgment regarding whether relator is presumptively entitled to diligent

participation credit pursuant to article 42.0199 of the Texas Code of Criminal Procedure.

In a criminal proceeding, mandamus relief is available only if the relator can demonstrate that: 1) the relator has no other adequate remedy at law; and 2) under the relevant law and facts, the respondent clearly abused the respondent's discretion or the act sought to be compelled is purely ministerial. *State ex rel. Rosenthal v. Poe*, 98 S.W.3d 194, 215 (Tex. Crim. App. 2003) (orig. proceeding).

Article 42.0199 of the Code of Criminal Procedure provides, "If a person is convicted of a state jail felony, the judge shall make a finding and enter the finding in the judgment of the case regarding whether the person is presumptively entitled to diligent participation credit in accordance with Section 15(h), Article 42.12." Tex. Code Crim. Proc. Ann. art. 42.0199 (West 2015). Because state jail inmates are not eligible for parole or good time credit, there is a reduction in sentence that operates in a manner similar to good conduct time that is called "diligent participation credit." *Id.* The Texas Department of Criminal Justice is required to keep a record of each day that the inmate was confined in a state jail facility and "diligently participated in any educational, vocational, treatment, or work program." *Id.*

A prerequisite of eligibility for this credit allowing a reduction in the state jail time sentence is a favorable ruling by the trial court at the time of imposition of sentence. The trial court is required to enter in the judgment, at the time of sentencing, a ruling that the defendant is or is not eligible for a diligent participation finding. *Id.* If a positive presumptive finding is made, the state jail inmate is entitled to a reduction in the term of confinement for each day of diligent participation.

Relator correctly asserts that the statute requires the trial court to make and enter a finding in the judgment of the case regarding whether the person is presumptively entitled to diligent participation credit. Relator, however, did not attach a copy of the judgment to his petition for writ of mandamus. This court cannot determine whether the trial court complied with article 42.0199.

In a mandamus proceeding, it is the relator's burden to show entitlement to the relief being requested. *In re Carrington*, 438 S.W.3d 867, 868 (Tex. App.—Amarillo 2014, orig. proceeding); *see also In re Vaishangi, Inc.*, 442 S.W.3d 430, 431 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding). Relator must file with the petition a certified or sworn copy of every document that is material to the relator's claim for relief and which was filed in any underlying proceeding. Tex. R. App. P. 52.7(a). The burden rests with the relator to provide the appellate court with a sufficient record to establish the relator's right to mandamus relief. *Carrington*, 438 S.W.3d at 868.

Because relator has not provided this court with a sufficient record showing he is entitled to relief, he has not established entitlement to the extraordinary relief of writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Chief Justice Frost and Justices Brown and Jewell.
Do Not Publish — Tex. R. App. P. 47.2(b).