

Order of March 7, 2017 Withdrawn; Petition for Writ of Mandamus Denied and Memorandum Opinion filed August 22, 2017.



In The

Fourteenth Court of Appeals

NO. 14-17-00139-CR

IN RE RIGOBERTO CEPEDA, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
176th District Court
Harris County, Texas
Trial Court Cause No. 1420219**

MEMORANDUM OPINION

On February 24, 2017, relator Rigoberto Cepeda 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 presiding judge of the 176th District Court of Harris County, to rule on relator's motion to convene a court of inquiry pursuant to Chapter 52 of the Code of Criminal Procedure. We deny the petition.

Relator filed his application to commence a court of inquiry on October 27, 2016, in the 176th Judicial District Court, Harris County, Texas. Relator contended that respondent had not ruled on his application. When relator filed his application, the presiding judge of the 176th Judicial District Court was the Honorable Stacey W. Bond. Judge Bond ceased to hold the office of judge of the 176th District Court, Harris County, Texas, effective January 1, 2017. Because relator's petition was unclear whether respondent's successor had the opportunity to consider relator's application, this court, in an order dated March 7, 2017, abated the mandamus proceeding to permit the respondent's successor, the Honorable Nikita Harmon, to reconsider the decision regarding relator's request for relief. *See* Tex. R. App. P. 7.2(b). We withdraw the order issued March 7, 2017, and reinstate the mandamus proceeding.

To be entitled to mandamus relief, a relator must show that (1) he has no adequate remedy at law to redress his alleged harm, and (2) 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). 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).

A 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 Henry*, ___ S.W.3d ___, 2017 WL 1450573 at *1 (Tex. App.—Houston [14th Dist.] Apr. 21, 2017, orig. proceeding).

Relator filed an application to commence a court of inquiry for the investigation into a burglary of a habitation and theft of property unrelated to his conviction for sexual assault. Whether to convene a court of inquiry is a discretionary matter:

When a judge of any district court of this state, acting in his capacity as magistrate, has probable cause to believe that an offense has been committed against the laws of this state, he may request that the presiding judge of the administrative judicial district appoint a district judge to commence a Court of Inquiry.

Tex. Code Crim. Proc. Ann. art. 52.01(a); *In re Charleston*, No. 06-10-00037-CR, 2010 WL 1878690, at *1 (Tex. App.—Texarkana May 12, 2010, no pet.) (not designated for publication).

We do not grant mandamus relief when it would be of no practical effect, or “if for any reason it would be useless or unavailing.” *Dow Chem. Co. v. Garcia*, 909 S.W.2d 503, 505 (Tex. 1995). Because commencement of a court of inquiry is discretionary, relator has failed to sufficiently show that the trial court had a legal duty to perform. Because relator has not shown himself entitled to mandamus relief we deny the petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Christopher, Busby, and Jewell.
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