

Petition for Writ of Mandamus Denied and Memorandum Opinion filed April 27, 2017.



In The

Fourteenth Court of Appeals

**NO. 14-17-00273-CR
NO. 14-17-00274-CR**

IN RE ROBERTO SANCHEZ, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
262nd District Court
Harris County, Texas
Trial Court Cause Nos. 867475 & 867476**

MEMORANDUM OPINION

On April 10, 2017, relator Roberto Sanchez 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

Denise Bradley, presiding judge of the 262nd District Court of Harris County, to rule on his motion for judgment nunc pro tunc.

On February 22, 2001, relator was sentenced to forty years' confinement on two counts of aggravated robbery pursuant to a plea bargain agreement with the State. The sentences were ordered to run concurrently. In the judgment, the trial court noted that the sentence would begin on June 14, 2000, giving appellant credit of 253 days toward his sentence. Relator claims he was entitled to a total credit of 413 days on one of the aggravated robbery convictions.

Attached to relator's petition for writ of mandamus is a motion for judgment nunc pro tunc requesting the additional jail time credit. Also attached to relator's petition is a response from the Harris County District Clerk, which notes as follows:

Dear MR SANCHEZ,

Your motion/request NUNC CREDIT was filed with the District Clerk and on 3-17-17 the Court:

- Took no action Denied your Motion/Request Granted your motion/request
 Took action Advised attorney of record Other

Other: The judgment on 867476 from 2-22-01 shows a sentence to begin date of 6-14-00. The booking date into Harris Co. Jail was 10-18-00, but since you were bench warranted form TDC we go by the detainer date of 7-10-2000, so the Court actually began your date early by giving credit from 6-14-00. - The credit on case 821131 out of the 208th court has sent. to begin on 11-17-99 with 97 days further credit. The booking date in HCJ was 8-14-99 (not 8-12-99 as you stated.) Regardless, even though sentences run concurrently, credits are not necessarily the same on judgments which don't arise out of the same transaction. Offense date on 867476 was 1-14-99 and on 821131 was 5-5-99.

In his petition for writ of mandamus relator argues that the above response is insufficient because it came from the district clerk rather than the trial court. 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 Henry*, ___ S.W.3d ___; 2017 WL 1415043 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding).

In his motion for nunc pro tunc judgment, relator alleges that he is entitled to jail-time-credit due to an arrest on an aggravated robbery charge from 1999, not the convictions in this proceeding. In this original proceeding, relator has not provided this court with certified copies of his motion for judgment nunc pro tunc or any other record supporting his claim for relief. It is the relator's burden to provide this court with a record sufficient to establish his right to relief. Tex. R. App. P. 52.3(k), 52.7(a); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex.1992). However, relator provided this court with the ruling he received from the district clerk. It is unclear from the record the source of the ruling, whether it is from the trial court or the district clerk. While the correspondence came from the district clerk, it is unclear whether the trial court gave the information to the clerk to be relayed to relator, or whether the district clerk wrote the information. Regardless of the source of the information, the issue raised by relator is not appropriately addressed in an original proceeding. *In re Brown*, 343 S.W.3d 803, 804 (Tex. Crim. App. 2011).

The Texas Court of Criminal Appeals has held a motion for judgment nunc pro tunc in the trial court, or writ of mandamus in the appellate court if such a motion is denied, "will provide a remedy only if the right to pre-trial jail-time credit is absolutely indisputable under the terms of article 42.03, section 2(a)(1)." *In re Brown*, 343 S.W.3d 803 (Tex. Crim. App. 2011).

The issue raised in this mandamus proceeding is whether relator's incarceration under the aggravated robbery conviction in 1999 should count as incarceration for the same "case" as the aggravated robbery convictions in 2001.

Article 42.03 provides that, “In all criminal cases the judge of the court in which the defendant is convicted shall give the defendant credit on the defendant’s sentence for the time that the defendant has spent: in jail for the case . . . from the time of his arrest and confinement until his sentence by the trial court.” Tex. Crim. Proc. Code Ann. art. 42.03(2)(1). The Court of Criminal Appeals held in *Brown* that this question is a matter of statutory construction and involves a manifestly judicial function rather than a purely ministerial one and is, therefore, not subject to revision by nunc pro tunc. *See Brown*, 343 S.W.3d at 805. “[A]n appellate court may not properly mandamus a trial court to enter a judgment nunc pro tunc in these circumstances.” *Id.*

The defendant in *Brown* had originally been arrested and incarcerated on a murder charge. *Id.* at 804. After seventeen months he was re-indicted for tampering with evidence after his co-defendant claimed Brown was not involved with the murder, but only the destruction of the body. *Id.* The trial court gave credit for pre-sentence time served only on the tampering with evidence charge. *Id.* Defense counsel filed a motion for judgment nunc pro tunc seeking additional credit for the seventeen months served on the murder charge, which the trial court denied. *Id.* On mandamus, this court denied relief, observing that whether the relator was entitled to credit against his sentence for the time he spent in jail on the murder charge before he was re-indicted for tampering with evidence was a matter for judicial determination, requiring the trial court to weigh and resolve conflicting legal claims. *In re Brown*, No. 14–10–00503–CR, 2010 WL 2541885, at *2 (Tex. App.—Houston [14th Dist.] June 25, 2010, orig. proceeding) (not designated for

publication)). Because no ministerial act was implicated, mandamus relief was unavailable. *Id.*

In this case, as in *Brown*, relator seeks jail-time-credit for time served on the previous aggravated robbery conviction. Because mandamus relief is unavailable to compel a non-ministerial act based on the facts of this case, relator's petition for writ of mandamus is denied. *See* Tex. R. App. P. 52.8(a).

PER CURIAM

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