

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
August 14, 2017.**



In The

Fourteenth Court of Appeals

NOS. 14-17-00629-CR, 14-17-00630-CR, and 14-17-00631-CR

IN RE MICHAEL DAVIS, Relator

ORIGINAL PROCEEDING

WRIT OF MANDAMUS

228th District Court

Harris County, Texas

Trial Court Cause Nos. 331288, 331289, and 331549

MEMORANDUM OPINION

On July 31, 2017, relator Michael Davis 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 Marc Carter, presiding judge of the 228th District Court of Harris County, to rule on relator's

Motion to Compel, in which he requests the trial court to order the Harris County District Clerk to comply with the court's order signed on January 12, 2016, granting relator's motion for a free copy of the clerk's file.

A trial court is required to consider and rule upon a motion within a reasonable time. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992) (orig. proceeding). “When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act.” *Id.* at 426.

As the party seeking relief, relator has the burden of providing this court with a sufficient record to establish his right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); Tex. R. App. P. 52.7(a)(1) (relator must file with petition “a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding”).

To be entitled to mandamus relief for a trial court's alleged failure to rule on a motion, the record must show both that the motion was filed and brought to the attention of the trial court; it is not enough that the motion is on file. *See In re Foster*, 503 S.W.3d 606 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding); *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). To establish that the motion was filed, relator must either provide a file stamped copy of the motion or proof that the motion was mailed to the clerk at proper address with proper postage. *See In re Bishop*, No. 14-06-00636-CV, 2006 WL 2434200, at *1

(Tex. App.—Houston [14th Dist.] Aug. 24, 2006, orig. proceeding) (per curiam) (mem. op.); *In re Callicotte*, No.14–16–00937–CV, 2016 WL 6990037 (Tex. App.—Houston [14th Dist.] Nov. 29, 2016, orig. proceeding) (per curiam) (mem. op.).

Relator is not entitled to mandamus relief because he has not provided this court with a record that shows that he has filed the Motion to Compel or that he has brought it to the attention of the trial court. The copy of the Motion to Compel in the record that relator allegedly filed on June 12, 2017 is not file stamped and there is no proof in the record that it was properly mailed, such as a return receipt.

Relator’s petition also has no certificate that the petition for writ of mandamus was served on the State of Texas, as required by Texas Rules of Appellate Procedure 9.5 and 52.2.

For these reasons, we deny relator’s petition for writ of mandamus.

PER CURIAM

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