

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
August 17, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-17-00652-CR

IN RE JOHN ROBERT GRAY, Relator

ORIGINAL PROCEEDING

WRIT OF MANDAMUS

230th District Court

Harris County, Texas

Trial Court Cause No. 481656

MEMORANDUM OPINION

On August 8, 2017, relator John Robert Gray 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 claims that 4,096 calendar days should be reinstated as time-served, thereby making him eligible for immediate discharge from his sentence. Relator asks this court to compel the Honorable Brad Hart,

presiding judge of the 230th District Court of Harris County, to rule on his pending motions regarding his request for reinstatement of the additional days as time served.

This is the third petition for writ of mandamus relator has filed with regard to his seeking to have 4,096 days served reinstated. In his first petition, relator requested that this court compel the Director of Classification and Records at the Texas Department of Criminal Justice-Institutional Division (the “Director”) to give relator all credit for calendar time served. *See In re Gray*, No. 14-17-00320-CR, 2017 WL 1901283, at *1 (Tex. App.—Houston [14th Dist.] May 9, 2017, orig. proceeding) (mem. op., not designated for publication). We dismissed relator’s first petition because this court does not have mandamus jurisdiction over the Director. *See id.*

In his second petition, relator requested that we compel the trial court to compel the Director to reinstate the 4,096 days as time served. *See In re Gray*, No. 14-17-00402-CR, 2017 WL 2382648, *1 (Tex. App.—Houston [14th Dist.] June 1, 2017, orig. proceeding) (mem. op., not designated for publication). We denied relator’s second petition because relator did not show that he had requested the trial court to compel the Director to grant relator the additional days as time served by including a file-stamped copy of a motion with such request. *See id.*

Relator claims that, since the issuance of our second memorandum opinion on June 1, 2017, he has filed several motions seeking relief from the Director’s refusal to reinstate the additional days as time served and has requested a date from the trial court to “adjudicate” his motions. Relator asserts that the trial court’s staff and the Harris County District Clerk’s post-conviction staff have failed or refused to respond

to his request for a date to resolve his motions, his request for file-stamped copies of his motions, and telephone calls made on his behalf.

To be entitled to mandamus relief, a relator must show that he has no adequate remedy at law for obtaining the relief he seeks; and (2) what he seeks to compel involves a ministerial act rather than a discretionary act. *In re Powell*, 516 S.W.3d 488, 494–95 (Tex. Crim. App. 2017) (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*, 14-17-00250-CR, — S.W.3d —, —, 2017 WL 1450573, at *1 (Tex. App.—Houston [14th Dist.] Apr. 21, 2017, 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. *Id.* It is relator’s burden to provide a sufficient record to establish that he is entitled to relief. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). Relator acknowledges that he has not provided this court with a file-stamped copy of any motion requesting such relief from the trial court. *See Henry*, 2017 WL 1450573, at *1.¹ In the absence of file-

¹ Although relator states that he is “reasonably concerned” about the court’s staff and district clerk’s staff not responding to his requests for file-stamped copies of his motions, he does not name them as respondents in his petition. Even if he did, this court would not have mandamus jurisdiction over the court’s staff or district clerk’s staff because they are not a district or county court judge and issuing a writ against them would not be necessary to enforce this court’s appellate jurisdiction. *See Tex. Gov’t Code Ann.* 22.221.

stamped copies of relator's motions, relator has not established that his motions are actually pending in the trial court.

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

PER CURIAM

Panel consists of Justices Christopher, Brown, and Wise.
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