

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



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-17-00680-CR**

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**IN RE ROMARCUS D. MARSHALL, Relator**

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**ORIGINAL PROCEEDING**

**WRIT OF MANDAMUS**

**179th District Court**

**Harris County, Texas**

**Trial Court Cause No. 833880**

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**MEMORANDUM OPINION**

On August 17, 2017, relator Romarcus D. Marshall 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 Randy Roll, judge of the 179th District Court of Harris County, to rule on relator's

alleged request to appoint counsel to represent him in a motion for DNA testing, as provided for by Article 64.01(c) of the Code of Criminal Procedure (the Motion for Counsel and DNA Testing).

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 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. *See In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (per curiam); *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, 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 Davis*, No. 14-17-00629-CR, 2017 WL 3480285, at \*1 (Tex. App.—Houston [14th Dist.] Aug. 14,

2017, orig. proceeding) (per curiam) (mem. op.). *See also In re Florence*, No. 14-11-00096-CR, 2011 WL 553241, at \*1 (Tex. App.—Houston [14th Dist.] Feb. 17, 2011, orig. proceeding) (per curiam) (mem. op.) (absent proof that the motions were properly filed and that the trial court has been requested to rule on the motions, but refused to do so, relator has not established his entitlement to the extraordinary relief of a writ of mandamus).

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 for Counsel and DNA Testing. The mandamus record does not contain the alleged Motion for Counsel and DNA Testing or proof that it was actually filed. *See In re Harrison*, No. 14-16-00733-CR, 2016 WL 5853285, at \*1 (Tex. App.—Houston [14th Dist.] Oct. 6, 2016, (per curiam) (mem. op.) (denying petition for writ of mandamus because relator did not provide sworn or certified copies of the motions for appointment of counsel and DNA testing that relator allegedly filed).

Relator's petition also has no certificate that his 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 Christopher, Brown, and Wise.  
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