

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
October 31, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-17-00804-CR

IN RE THERON G, OWENS, Relator

ORIGINAL PROCEEDING

WRIT OF MANDAMUS

178th District Court

Harris County, Texas

Trial Court Cause No. 1167769

MEMORANDUM OPINION

On October 12, 2017, relator Theron G. Owens 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 Kelli Johnson, presiding judge of the 178th District Court of Harris County, to rule on two motions for new trial based on newly discovered evidence.

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*, 525 S.W.3d 381, 382 (Tex. App.—Houston [14th Dist.] 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.*

First we address whether the trial court has jurisdiction to rule on relator’s motions for new trial based on newly discovered evidence. Without jurisdiction, a trial court would have no legal duty to rule on the motion. The trial court does not have “inherent” jurisdiction. *State v. Patrick*, 86 S.W.3d 592, 596 (Tex. Crim. App. 2002) (plurality op.). Rather, the trial court derives its jurisdiction from either the Texas Constitution or by legislative enactment. *Staley v. State*, 420 S.W.3d 785, 795 (Tex. Crim. App. 2013).

“When a conviction has been affirmed on appeal and the mandate has issued, general jurisdiction is not restored in the trial court.” *Patrick*, 86 S.W.3d at 594. The trial court entered a judgment of conviction on August 3, 2011. This court affirmed relator’s conviction on April 11, 2013, and the Texas Court of Criminal Appeals refused to grant relator’s petition for review on August 21, 2013. *See Owens v. State*, No. 14-11-00676-CR, 2013 WL 1499574 (Tex. App.—Houston [14th Dist.] Apr. 11, 2013, pet. ref’d) (mem. op., not designated for publication).

Under Texas Rule of Appellate Procedure 21.4(a), a motion for new trial must be filed within thirty days of the imposition of sentence. Tex. R. App. P. 21.4(a). The trial court does not have jurisdiction to entertain an untimely motion for new trial. *Drew v. State*, 743 S.W.2d 207, 223 (Tex. Crim. App. 1987). That an untimely motion for new trial is based on newly discovered evidence does not provide the trial court with jurisdiction to rule on the motion. *See Licon v. State*, 99 S.W.3d 918, 926 (Tex. App.—El Paso 2003, no pet.) (holding the fact that the motion for new trial is based on newly discovered evidence has no impact on the appellate time table).

Relator states that he mailed his first motion for new trial on June 12, 2017, and his second motion for new trial on September 1, 2017—six years after the trial court imposed relator’s sentence. Therefore, relator’s motions for new trial were untimely, and the trial court had no jurisdiction to consider the motions. In the absence of jurisdiction, the trial court does not have a legal duty to rule on the motions for new trial based on newly discovered evidence.

Relator has not established that he is entitled to a writ of mandamus. Accordingly, we deny relator’s petition for writ of mandamus.

PER CURIAM

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