

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed January 11, 2018.**



**In The**

**Fourteenth Court of Appeals**

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**NOS. 14-17-01004-CR, 14-17-01005-CR, and 14-17-01006-CR**

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**IN RE MICHAEL DAVIS, Relator**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
228th District Court  
Harris County, Texas  
Trial Court Cause Nos. 331288, 331289, and 331549**

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**MEMORANDUM OPINION**

On December 27, 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 Judge Carter 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”).

“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 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding) (per curiam). However, to be entitled to such relief, 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. The record must show both that the motion was filed and the trial court has not ruled on the motion within a reasonable time after being requested to do so. *See In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (per curiam). Therefore, relator has the burden to provide this court

with a file-stamped certified or sworn copy of the Motion to Compel<sup>1</sup> and a record showing that he brought the Motion to Compel to the attention of the trial court for a ruling.<sup>2</sup>

Relator has not provided a record showing that the Motion to Compel was filed and received by the trial court. The copy of the Motion to Compel dated October 6, 2017 that is attached to relator's petition is not a certified or sworn copy and it has no stamp showing that it was filed. Nor has relator provided a record showing that he requested the trial court to rule on the Motion to Compel. Relator therefore is not entitled to mandamus relief. For these reasons, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Boyce, Jamison, and Brown.

Do Not Publish — Tex. R. App. P. 47.2(b).

[Judge Jamison would not deny this motion at this time.]

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<sup>1</sup> See *In re Wigley*, No. 14-17-00102-CV, 2017 WL 642109, at \*1 (Tex. App.—Houston [14th Dist.] Feb. 16, 2017, orig. proceeding) (per curiam) (mem. op.) (denying petition for writ of mandamus because relator failed to provide this court with a file-stamped certified or sworn copy of the motion and a record showing that the motion was brought to the trial court's attention); *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.) (denying petition for writ of mandamus because relator has not included file-stamped copies of the motions in the record); *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.) (denying petition for writ of mandamus because there was no file stamp or other indication the motions were in fact filed and are pending before the trial court).

<sup>2</sup> The relator must show that the motion on which he seeks a ruling was both filed and brought to the attention of the trial court. *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding). The district clerk's receipt of a motion "does not establish that the motion was brought to the attention of the trial court because the clerk's knowledge of the motion is not imputed to the trial court. *Id.* "Filing a document with the district clerk does not mean the trial court is aware of it; nor is the clerk's knowledge imputed to the trial court." *In re Querishi*, No. 14-11-00294-CV, 2011 WL 1365002, at \*1 (Tex. App.—Houston [14th Dist.] Apr. 12, 2011, orig. proceeding) (per curiam) (mem. op.) (citing *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding)).