

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



In The

Fourteenth Court of Appeals

NO. 14-18-01012-CR

IN RE THERMON JAMES FLANIGAN, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
174th District Court
Harris County, Texas
Trial Court Cause No. 716513**

MEMORANDUM OPINION

On November 21, 2018, relator Thermon James Flanigan filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West Supp. 2017); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Hazel B. Jones, presiding judge of the 174th District Court of Harris County, to examine the results of alleged DNA testing, hold a hearing, and make a finding as to whether, had the results been available during the trial of the offense, it is reasonably probable that the person would not have been convicted. *See* Tex. Crim. Proc. Code § 64.04.

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 party’s right to mandamus relief generally requires a predicate request for some action and a refusal of that request.” *In re Perritt*, 992 S.W.2d 444, 446 (Tex. 1999) (orig. proceeding) (per curiam). “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.” *In re Henry*, 525 S.W.3d 381 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding). The record must show that the motion was both filed and brought to the attention of the judge for a ruling. *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).

Relator has not provided this court with a record showing that: (1) he requested the trial court to hold a hearing and make a finding, as provided for by Article 64.04 of the Code of Criminal Procedure, and (2) the trial court refused or failed to rule on such a request within a reasonable time. Accordingly, we deny relator’s petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Busby, Brown, and Wise.
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