

*Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio*



MEMORANDUM OPINION

No. 04-09-00528-CR

IN RE Ovidio GARCIA, JR.

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Catherine Stone, Chief Justice
Phylis J. Speedlin, Justice
Marialyn Barnard, Justice

Delivered and Filed: October 7, 2009

PETITION FOR WRIT OF MANDAMUS DENIED

On August 24, 2009, relator Ovidio Garcia filed a petition for writ of mandamus, complaining of the trial court's failure to rule on his motion for DNA testing. However, on September 29, 2009, the trial court denied relator's motion for DNA testing. Accordingly, the petition is DENIED AS MOOT. TEX. R. APP. P. 52.8(a).

PER CURIAM

DO NOT PUBLISH

¹ This proceeding arises out of Cause No. 91-CR-43, styled *State of Texas v. Ovidio Garcia, Jr.*, in the 229th Judicial District Court, Starr County, Texas, the Honorable Alex W. Gabert presiding. However, following Judge Gabert's recusal from the case, the Honorable J. Manuel Bañales, presiding judge of the Fifth Administrative Judicial Region of Texas, was assigned to the case in an order dated June 17, 2008.