

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



MEMORANDUM OPINION

No. 04-10-00511-CR

IN RE Raymond DAVILA

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Karen Angelini, Justice
Phylis J. Speedlin, Justice
Rebecca Simmons, Justice

Delivered and Filed: August 4, 2010

PETITION FOR WRIT OF MANDAMUS DENIED

On July 9, 2010, relator Raymond Davila filed a petition for writ of mandamus, seeking to compel the trial court to rule on his motion for forensic DNA testing.

To obtain a petition for writ of mandamus compelling the trial court to consider and rule on a motion, a relator must establish that the trial court: (1) had a legal duty to perform a non-discretionary act; (2) was asked to perform the act; and (3) failed or refused to do so. *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding). When a properly filed motion is pending before a trial court, the act of giving consideration to and ruling upon that motion is ministerial, and mandamus may issue to compel the trial judge to act. *See Safety-Kleen Corp. v.*

¹ This proceeding arises out of Cause No. 93-CR-3696, in the 175th Judicial District Court, Bexar County, Texas, the Honorable Mary Román presiding.

Garcia, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). However, relator has the burden of providing this court with a record sufficient to establish his right to mandamus relief. See TEX. R. APP. P. 52.7(a) (“Relator must file with the 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”); see also TEX. R. APP. P. 52.3(k)(1)(A); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992).

Here, relator has not provided this court with a file stamped copy of his motion or any other documents to show that a properly filed motion is pending before the trial court. Nor has relator established that the trial court has been made aware of his motion or has expressly refused to rule on it. See *In re Isbell*, No. 04-06-00558-CV, 2006 WL 3206075, at *2 (Tex. App.—San Antonio November 8, 2006, orig. proceeding) (mem. op.).

Based on the foregoing, we conclude that relator has not shown himself entitled to mandamus relief. Accordingly, the petition for writ of mandamus is denied. TEX. R. APP. P. 52.8(a).

PER CURIAM

DO NOT PUBLISH