



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-14-00020-CR

James **LEGATE**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 290th Judicial District Court, Bexar County, Texas  
Trial Court No. 1998CR6480  
Honorable Melisa Skinner, Judge Presiding

PER CURIAM

Sitting: Karen Angelini, Justice  
Santee Bryan Marion, Justice  
Marialyn Barnard, Justice

Delivered and Filed: February 12, 2014

DISMISSED

On August 11, 1999, James Legate was sentenced to ninety-nine years imprisonment. On January 7, 2014, he filed a notice of appeal. In his notice of appeal, Legate states that on September 15, 2013, he filed a Motion for the Release of Clerk's Record. He complains that the trial court has failed to rule on his motion. A complaint about the failure of a trial court to rule on a motion cannot be brought on direct appeal, but should instead be brought in a mandamus proceeding. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding); *In re Ramirez*, 994 S.W.2d 682, 683 (Tex. App.—San Antonio 1998, orig. proceeding). We therefore ordered

appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant has filed a response to our order that stating he is “voluntarily dismissing [his] notice of appeal.” *See* TEX. R. APP. P. 42.2. We dismiss this appeal.

PER CURIAM

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