



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

**MEMORANDUM OPINION**

No. 04-18-00490-CR

**IN RE** Eustorgio Guzman **RESENDEZ**

Original Mandamus Proceeding<sup>1</sup>

PER CURIAM

Sitting: Rebeca C. Martinez, Justice  
Patricia O. Alvarez, Justice  
Irene Rios, Justice

Delivered and Filed: August 15, 2018

PETITION FOR WRIT OF MANDAMUS DENIED

Relator filed a petition for writ of mandamus complaining the trial court denied his request for assistance of counsel in relation to his motion for forensic DNA testing.

To establish a right to mandamus relief in a criminal case, the relator must show the trial court violated a ministerial duty and there is no adequate remedy at law. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding). A trial court has a ministerial duty to rule on a properly-filed and timely-presented motion. *See In re State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding).

However, a 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)(1) (requiring relator to file “a

---

<sup>1</sup> This proceeding arises out of Cause No. 91CR43, styled *The State of Texas v. Eustorgio Guzman Resendez*, pending in the 229th Judicial District Court, Starr County, Texas, the Honorable Ana Lisa Garza presiding.

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"). Here, relator contends his motion "was heard and denied" on August 18, 2016. However, relator did not provide this court with a copy of an order or any document showing the trial court's ruling. *See* TEX. R. APP. P. 52.3(k)(1)(A) ("The appendix must contain: (A) a certified or sworn copy of any order complained of, or any other document showing the matter complained of . . .").<sup>2</sup>

Because relator did not provide this court with a record sufficient to establish his right to mandamus relief, the petition for writ of mandamus is denied.

PER CURIAM

Do not publish

---

<sup>2</sup> We also note relator filed an appeal with this court raising the same complaint. *See* appellate cause number 04-18-00316-CR. The clerk's record in that appeal also does not contain any order from the trial court. The trial court docket sheet filed in that appeal indicates a telephonic hearing was conducted on August 8, 2016, and the "court gave [defendants] 7 days to file briefs/caselaw. Court to review case."