



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00586-CR

IN RE Jose Maria CAVAZOS

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Marialyn Barnard, Justice
Patricia O. Alvarez, Justice
Irene Rios, Justice

Delivered and Filed: August 29, 2018

PETITION FOR WRIT OF MANDAMUS DENIED

Relator filed a petition for writ of mandamus complaining the trial court has refused to rule on his motion to reopen punishment.

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

¹ This proceeding arises out of Cause No. 2010-CR-5796, styled *The State of Texas v. Jose Maria Cavazos*, pending in the 187th Judicial District Court, Bexar County, Texas, the Honorable Steve Hilbig 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"). In a case such as this one, a relator has the burden to provide the court of appeals with a record showing the trial court was made aware of the motion at issue and that such motion has not been ruled on by the trial court for an unreasonable period of time. *See In re Gallardo*, 269 S.W.3d 643, 645 (Tex. App.—San Antonio 2008, orig. proceeding).

Attached to relator's petition is a copy of (1) a document entitled Motion to Reopen Punishment, which relator alleges he filed on May 24, 2018 and (2) a document entitled Request for Court to Give Ruling on Motion to Reopen Punishment, which he alleges he filed on July 16, 2018. Neither document is file-stamped by the clerk; and no other documents were provided by relator showing the trial court was made aware of either motion.

Finally, the temporal requirement on a trial court to rule on a pending motion is only that the judge rule within a "reasonable time." *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). Whether such a period has lapsed is dependent upon the circumstances of each case. *Chavez*, 62 S.W.3d at 228. Moreover, "no bright-line demarcates the boundaries of a reasonable time period." *Id.* Its scope is dependent upon a myriad of criteria, including the trial court's actual knowledge of the motion, its overt refusal to rule, the state of the court's docket, and the existence of other judicial and administrative matters that must be addressed first. *Id.* at 228-29. This court has held that one month is a reasonable time to pass before a court rules. *See In re Holleman*, No. 04-04-00183-CV, 2004 WL 624584, at *1 (Tex. App.—San Antonio Mar. 31, 2004, orig. proceeding) (mem. op.) (per curiam); *but see Ramirez*, 994 S.W.2d at 684 (deciding 18-month delay was unreasonable).

In this case, approximately three months have elapsed since relator allegedly filed his motion to reopen and about one month has elapsed since he allegedly filed his motion requesting

a ruling. The record does not contain a copy of the trial court's docket or other proof that establishes the trial court has failed to rule on his motions within a reasonable time.

Because relator did not provide this court with a record, he has failed to establish the motions at issue were filed with the trial court, the trial court was made aware of the motions, or the trial court has expressly refused to rule on the motions within a reasonable time. Therefore, relator has not shown himself entitled to mandamus relief. Accordingly, the petition for writ of mandamus is denied.

PER CURIAM

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