



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00283-CR

IN RE Eduardo A. **TREVINO**

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: September 9, 2020

PETITION FOR WRIT OF MANDAMUS DENIED

On May 29, 2020, relator filed a pro se petition for writ of mandamus in which he asserts the trial court has refused to rule on his motion for new trial filed sometime in April 2020 following the April 12, 2000 judgment in his underlying criminal case. More specifically, relator complains the overruling by operation of law is an improper “running out of the clock” and this court should compel the trial court to enter a ruling that his 2000 judgment is void.

A “defendant may file a motion for new trial before, but no later than 30 days after, the date when the trial court imposes or suspends sentence in open court.” TEX. R. APP. P. 21.4(a). Here, relator’s motion would have been due thirty days from April 12, 2000, or May 12, 2000. Relator filed his motion several years later. Therefore, his motion was not timely filed. When a

¹ This proceeding arises out of Cause No. 1999-CR-6205, styled *The State of Texas v. Eduardo A. Trevino*, pending in the 144th Judicial District Court, Bexar County, Texas, the Honorable Melissa Skinner presiding.

timely motion for new trial is filed, “[t]he court must rule on a motion for new trial within 75 days after imposing or suspending sentence in open court.” TEX. R. APP. P. 21.8(a). However, “[a] motion [for new trial] not timely ruled on by written order will be deemed denied when the period prescribed in (a) expires.” *Id.* at 21.8(c). Therefore, even if relator’s April 2020 motion for new trial was timely filed, it has been overruled by operation of law. Trial courts are not required to rule on motions for new trial because the passage of time may serve to overrule such motions by operation of law. *In re Gonzalez*, 04-18-00170-CR, 2018 WL 1610916, at *1 (Tex. App.—San Antonio Apr. 4, 2018, orig. proceeding) (per curiam). Because the trial court had no duty to rule on relator’s motion for new trial, it did not abuse its discretion by allowing the motion to be overruled by operation of law. Accordingly, relator has failed to establish that he is entitled to mandamus relief.

As to relator’s request that we compel the trial court to enter a finding of void, although we have jurisdiction to direct a trial court to exercise its discretion, we are not permitted to tell the trial court how to rule on a pending matter. *In re Rodriguez*, 04-20-00136-CR, 2020 WL 1277230, at *1 (Tex. App.—San Antonio Mar. 18, 2020, orig. proceeding) (per curiam).

Relator also filed a motion for leave to file his petition for writ of mandamus, which we deny as moot because leave is not required to file a petition in an intermediate appellate court. *See* TEX. R. APP. P. 52.1; *In re Medina*, 04-19-00041-CR, 2019 WL 360534, at *1 (Tex. App.—San Antonio Jan. 30, 2019, orig. proceeding) (per curiam). Finally, relator’s motion to clarify in which he asks this court to grant his motion for new trial is also denied.

Relator’s petition for writ of mandamus and his amended petition are denied.

PER CURIAM

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