



Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-21-00142-CR

IN RE Gabriel R. **GARCIA**, Relator

Original Mandamus Proceeding¹

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Irene Rios, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: June 16, 2021

PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED

Gabriel R. Garcia has filed a petition for writ of mandamus, arguing Judge Oscar Hale has not timely ruled on a properly filed motion. Because we conclude Judge Hale has not ruled on the motion within a reasonable time and Garcia lacks another adequate legal remedy, we conditionally grant mandamus relief.

BACKGROUND

In 2009, after pleading guilty, Garcia was convicted of two counts of aggravated sexual assault. He was sentenced to forty years in prison for each count, with the sentences to run concurrently. On January 19, 2021, Garcia filed a motion for post-trial discovery of exculpatory

¹ This proceeding arises out of Cause No. 2007CRS000739D4 in the 406th Judicial District Court, Webb County, Texas, the Honorable Oscar J. Hale, Jr. presiding.

evidence under the Michael Morton Act. *See* TEX. CODE CRIM. PROC. art. 39.14. Specifically, Garcia requested the two affidavits executed in support of the warrants issued for his arrest.

On January 19, 2021, Garcia also sent a letter to Judge Hale, stating the motion had been filed and requesting a ruling. On January 28, 2021, Garcia sent a second letter to Judge Hale, again requesting a ruling on the motion. On April 14, 2021, Garcia filed a petition in this court, seeking a writ of mandamus to direct Judge Hale to rule on the motion. Garcia filed an amended petition on May 6, 2021, and on May 26, 2021, the State filed a response. Judge Hale has not filed a response.

AVAILABILITY OF MANDAMUS RELIEF

We have broad authority to issue writs of mandamus, and all other writs, when necessary to enforce our jurisdiction. *See* TEX. GOV'T CODE § 22.221(a). But when, as here, a relator seeks mandamus relief to direct a trial judge to perform a ministerial act, we may issue such writs only when “agreeable to the principles of law regulating those writs.” *Id.* § 22.221(b). “A relator is entitled to mandamus relief against a trial court when (1) the relator has no other adequate legal remedy and, (2) the act sought to be compelled is purely ministerial.” *In re State ex rel. Ogg*, 618 S.W.3d 361, 363 (Tex. Crim. App. 2021) (orig. proceeding).

A. No Other Adequate Legal Remedy

A court of appeals may issue a writ of mandamus to compel a trial judge to consider and rule on a properly filed motion. *See In re Marez*, 345 S.W.3d 503, 503–04 (Tex. App.—San Antonio 2011, orig. proceeding) (citing *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (op. on reh’g) (orig. proceeding)). However, when compelling a trial judge to consider and rule on such a motion, we may not direct a trial judge to rule a certain way on the motion. *See id.* When a trial judge declines to consider and rule on a properly filed motion, the movant has no other adequate legal remedy. *See id.* Because Garcia complains of Judge Hale’s

failure to rule on his motion within a reasonable time, Garcia lacks another adequate legal remedy.

See id.

B. A Purely Ministerial Act

“An act is ‘ministerial’ if it constitutes a duty clearly fixed and required by law.” *Gray*, 726 S.W.2d at 128. The ministerial duty to act “must be unequivocal, unconditional and present” and be “accomplished without the exercise of discretion or judgment.” *Id.* “If there is any discretion or judicial determination attendant to the act, it is not ministerial in nature. Nor is a ministerial act implicated if the trial court must weigh conflicting claims or collateral matters which require legal resolution.” *Id.*

Considering and ruling on a properly filed motion is a purely ministerial act. *Id.* The attendant ministerial duty is that a trial court must “consider and rule upon a properly filed motion within a reasonable time.” *Marez*, 345 S.W.3d at 504. Consequently, “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.” *Id.* Because Garcia argues Judge Hale has not timely considered a properly filed motion, and seeks to compel Judge Hale’s consideration and ruling on his motion, the act sought to be compelled is purely ministerial. *See id.*

FAILURE TO RULE WITHIN A REASONABLE TIME

Garcia argues Judge Hale has not considered and ruled on his properly filed motion within a reasonable time, and mandamus relief generally is available to address such complaints. Before issuing mandamus relief, we must consider whether relator has presented a mandamus record showing the respondent has failed to perform the ministerial act. *See id.* In failure-to-rule cases, this includes showing the trial judge: “(1) had a legal duty to perform a nondiscretionary 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) (per curiam).

A. Relator’s Burden & the Mandamus Record

The relator bears the burden to present a sufficient record showing the respondent trial judge has failed to perform a ministerial act for which there is no other adequate legal remedy. *See In re Striblin*, No. 04-20-00353-CR, 2020 WL 4929795, at *1 (Tex. App.—San Antonio July 29, 2020, no pet.) (mem. op., not designated for publication) (citing TEX. R. APP. P. 52.7(a)). “After the record is filed, [the] relator or any other party to the proceeding may file additional materials for inclusion in the record.” TEX. R. APP. P. 52.7(b). In the mandamus record before us, Garcia presented us with sworn copies of his motion and his requests for Judge Hale to rule on the motion. The State filed additional materials, including the charging instrument and judgment from Garcia’s underlying criminal convictions, for our consideration.

B. Legal Duty to Act on a Properly Filed Motion & Request for Performance

In determining whether a trial judge has failed to rule on a properly filed motion within a reasonable time, we first consider whether the motion was properly filed and whether relator requested that the respondent rule on the motion. *See Marez*, 345 S.W.3d at 504; *Molina*, 94 S.W.3d at 886. To establish that the motion was properly filed, “the relator must provide either a file-stamped copy of the motion or other proof that the motion, in fact, was filed and is pending before the trial court.” *In re Ramos*, 598 S.W.3d 472, 473 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding). The mandamus record contains file-stamped copies of Garcia’s motion. On the top of the motion, Garcia asked the clerk to bring the motion to the trial judge’s attention. The mandamus record also contains two letters, addressed to Judge Hale, requesting a ruling on the

motion.² The mandamus record further shows Garcia filed the motion in the case and court of his conviction and requested performance of the ministerial act.

1. The Merits of a Motion are Immaterial to the Ministerial Duty to Rule on the Motion

The State argues Judge Hale has no ministerial duty to consider or rule on Garcia’s motion because the ministerial duty applies only if the motion must be granted. The State cites *In re Thompson*, 330 S.W.3d 411 (Tex. App.—Austin 2010, orig. proceeding), a civil case in which mandamus relief was conditionally granted to direct a trial judge either to recuse or to refer the motion as required by Texas Rule of Civil Procedure 18a. *Id.* at 417–18. In *Thompson*, the court held the trial judge “abused his discretion by failing to either recuse himself or refer the motion to the presiding judge of the administrative judicial district.” *Id.* at 418. However, the *Thompson* court reached this conclusion without addressing the recusal motion’s merits. *See id.* Likewise, in a failure-to-rule case, we consider whether a trial judge has failed to perform the ministerial act of considering and ruling on a motion, not whether the motion has merit. *See Ramos*, 598 S.W.3d at 473.

2. The Applicability of the Michael Morton Act Pertains to the Merits

Garcia’s motion cites provisions of article 39.14 enacted under the Michael Morton Act. The Court of Criminal Appeals recently explained that the State’s obligations for disclosure of evidence under the Act are broader and apply after conviction. *See Watkins v. State*, 619 S.W.3d 265, 278 (Tex. Crim. App. 2021) (“The State’s new, broader obligations apply prior to trial, continue after conviction, and must be complied with quickly.”). Noting that Garcia’s motion cites to provisions in the Act, the State argues the Act does not apply to this case because Garcia was

² The trial court’s docket sheet shows Garcia’s motion was sent to the court coordinator on the day Garcia filed the motion, and the court coordinator reviewed a letter from Garcia on February 9, 2021. Neither the State nor Judge Hale denies that the court was unaware of Garcia’s motion or requests for a ruling on the motion.

charged and convicted before the Act became effective. The State argues that because the Act “is not retroactive and therefore does not apply to him, [Garcia] has failed to establish that [Judge Hale] has a ministerial duty to grant his discovery motion which was predicated on that statute.” But in this mandamus proceeding, Garcia is not asking us to compel Judge Hale to grant his motion; Garcia is merely seeking a ruling on the motion. Because our mandamus review is limited to the latter issue, we conclude the State’s arguments about the Michael Morton Act’s applicability relate to the merits of the motion, which Judge Hale may consider when considering and ruling on Garcia’s motion.

C. Reasonable Time

Our last inquiry in a failure-to-rule case is whether the trial judge has not considered and ruled on the motion within a reasonable time. *See Marez*, 345 S.W.3d at 504; *Molina*, 94 S.W.3d at 886.

1. Applicable Law

No bright-line rule defines a reasonable time to rule for all motions in all cases. *In re Richardson*, No. 04-20-00154-CR, 2020 WL 1442643, at *1 (Tex. App.—San Antonio Mar. 25, 2020, orig. proceeding) (per curiam) (mem. op., not designated for publication). Reasonableness in this context, as in others, depends upon the relevant circumstances. *See id.* Circumstances relevant to a reasonable time to rule can include “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,” as well as the complexity of the legal and factual issues presented. *See id.* We have “held that up to three months” can be a reasonable time to rule on a motion. *Id.*; *see In re Smith*, No. 04-16-00458-CR, 2016 WL 5396743, at *1 (Tex. App.—San Antonio Sept. 28, 2016, orig. proceeding) (mem. op., not designated for publication)

(“Because Relator’s motions have been pending for over four months without being ruled upon by the trial court, we conditionally grant Relator’s petition for writ of mandamus.”).

2. Analysis

Garcia’s motion is one page long. The motion requests two affidavits executed in support of his arrest warrants. The motion cites two provisions of the Michael Morton Act. The legal and factual issues are not complex. Garcia filed his motion on January 19, 2021. That same day, he requested a ruling in a separate letter addressed to Judge Hale. Garcia sent Judge Hale a second letter requesting a ruling on January 28, 2021. The request was reviewed by Judge Hale’s court coordinator on February 9, 2021. The motion was pending for nearly three months before Garcia filed the petition for writ of mandamus. Other than challenging the merits of the motion, the State and Judge Hale have not provided this court with any other objective circumstances explaining or justifying Judge Hale’s decision not to rule on Garcia’s motion. Considering the relevant circumstances, we hold Judge Hale has not performed his ministerial duty to consider and rule on Garcia’s motion within a reasonable time.

CONCLUSION

Garcia has satisfied his burden to provide a mandamus record showing Judge Hale has failed to rule on a properly filed motion within a reasonable time, which is a purely ministerial act, and Garcia has no other adequate legal remedy. The issuance of a writ of mandamus under these circumstances is agreeable to the principles of law regulating such writs. We conditionally grant mandamus relief and direct Judge Hale to consider and rule on Garcia’s motion. The writ will issue only if Judge Hale fails to comply within fourteen days.

Patricia O. Alvarez, Justice

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