

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00534-CR

IN RE DWAYNE T. DAVIS

Original Proceeding

MEMORANDUM OPINION

Dwayne T. Davis filed a petition for writ of mandamus in which he seeks to compel the trial court to answer Davis's motion for entry of a judgment nunc pro tunc granting pre-sentence jail time credit. *See Ex parte Ybarra*, 149 S.W.3d 147, 148 (Tex. Crim. App. 2004). We deny the petition for mandamus relief.

The mandamus record contains neither a copy of the motion nor proof of its filing with the trial court. *See Tex. R. App. P. 52.7(a)(1)*. In its response to the petition, the State denies that a motion for judgment nunc pro tunc is on file with the trial court. The State also argues that Davis would not be entitled to additional credit on his sentence for possession of a deadly weapon in a penal institution because the date on which Davis was

first “in jail for the case” was the date of indictment as reflected on the judgment. *See generally Beltran v. State*, 99 S.W.3d 807, 812 (Tex. App.—Houston [14th Dist.] 2003, pet. ref’d); *see also* Tex. Code Crim. Proc. Ann. art. 42.03, § 2(a)(1) (West Supp. 2011).

“A motion for judgment *nunc pro tunc* or a writ of mandamus to the appellate court if such a motion is denied will provide a remedy only if the right to pre-trial jail-time credit is absolutely indisputable under the terms of Article 42.03, Section 2(a)(1).” *In re Brown*, 343 S.W.3d 803, 804 (Tex. Crim. App. 2011) (order); *see* Tex. Code Crim. Proc. Ann. art. 42.03, § 2(a)(1). Relator failed to establish that he has a right to relief. Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Submitted on November 30, 2011
Opinion Delivered December 14, 2011
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.