

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-18-00300-CR

IN RE MARIO LAVELL COCKERHAM

Original Proceeding
253rd District Court of Liberty County, Texas
Trial Cause No. 26,494

MEMORANDUM OPINION

Mario Lavell Cockerham filed a petition for writ of mandamus, in which he asks this Court to compel the trial court to rule on Cockerham’s post-conviction motion for forensic DNA testing. *See generally* Tex. Code Crim. Proc. Ann. art. 64.03 (West 2018). Cockerham contends that the trial court failed to respond to the motion Cockerham filed on August 22, 2017. We provided Cockerham with an opportunity to amend his petition to certify that he served a copy of the petition on the real party in interest and establish that he informed the trial court that the motion had been filed and required action. Cockerham responded to this Court’s notice, but

he failed to provide a file-stamped copy of his motion and a request for a ruling that was addressed to the trial court. Additionally, Cockerham failed to establish that he served a copy of his mandamus petition on the State of Texas through its counsel of record in the trial court. *See* Tex. R. App. P. 9.5; *see also* Tex. R. App. P. 52.2 (“A person whose interest would be directly affected by the relief sought is a real party in interest and a party to the case.”).

To establish that a trial court abused its discretion by failing to rule on a motion, the relator must show “that the trial court: (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). “The trial court is not required to consider a motion that has not been called to its attention by proper means.” *In re Henry*, 525 S.W.3d 381, 382 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding).

The relator failed to establish that he is entitled to the relief sought. Accordingly, the petition for writ of mandamus is denied without prejudice. *See* Tex. R. App. P. 52.8(a).

PETITION DENIED.

PER CURIAM

Submitted on August 28, 2018
Opinion Delivered August 29, 2018
Do Not Publish

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