



**In the  
Court of Appeals  
Second Appellate District of Texas  
at Fort Worth**

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No. 02-20-00258-CV

No. 02-20-00322-CV

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IN RE BRANDON BLAKE COLEMAN

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Original Proceedings  
355th District Court of Hood County, Texas  
Trial Court No. CR12297

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Before Sudderth, C.J.; Birdwell and Womack, JJ.  
Memorandum Opinion by Justice Birdwell

## MEMORANDUM OPINION

On August 20, 2020, Brandon Blake Coleman filed a pro se petition for writ of mandamus in cause number 02-20-00258-CV asking this court to order the trial court to rule on his pro se motion for postconviction forensic DNA testing so as not to deprive him of the right of appeal.

In the State's initial response to Coleman's petition, filed August 28, 2020, the State conceded that, although Coleman had filed his DNA motion on May 4, 2020, the trial court had yet to rule on it. Because of the almost four-month delay, the State urged this court to grant the mandamus relief Coleman requested, citing our granting of mandamus relief under similar circumstances in *In re Lockett*, No. 2-08-452-CV, 2009 WL 1740145, at \*1 (Tex. App.—Fort Worth June 16, 2009, orig. proceeding) (per curiam) (mem. op.) (seven-month delay), and *In re Adeleke*, No. 2-08-160-CV, 2008 WL 4052999, at \*1 (Tex. App.—Fort Worth Aug. 29, 2008, orig. proceeding) (per curiam) (mem. op.) (six-month delay). On September 3, 2020, however, the State filed an amended response, to which it attached a copy of the DNA motion that on the last page showed the handwritten notation "Denied 5-19-2020," followed by the trial judge's handwritten signature. The State's amended response also included a copy of the trial court's docket sheet, which included the following entry for May 19, 2020: "Deny Δ's M/DNA Testing.<sup>1</sup>"

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<sup>1</sup>The entry is followed by a parenthetical, which the State asserts references a prior order denying a DNA motion filed by Coleman in 2015: "(see O. of Ct. dated 4-

On September 21, 2020, Coleman filed a reply—dated September 14, 2020, and postmarked the following day—in which he indicated that he first received notice of the May 19, 2020 ruling with service of the State’s amended response.

Coleman has now filed a second *pro se* petition for writ of mandamus, which we have filed as cause number 02-20-00322-CV, asking this court to order the trial court to enter a written order on his DNA motion. In support of his second petition, Coleman cites case law that is factually distinguishable from the facts here. Coleman also asserts that he filed a motion to extend post-judgment deadlines, presumably in the trial court, on September 14, 2020, citing as grounds therefor, in part, the absence of service of any written order denying his DNA motion. However, Coleman did not attach a copy of that extension motion to his second petition for writ of mandamus. *See* Tex. R. App. P. 52.3(g), (k)(1)(A).

Assuming without deciding that the May 19, 2020 handwritten, signed, and dated ruling of the trial court is an appealable order, any notice of appeal from that ruling would have ordinarily been due no later than July 3, 2020, well before (1) Coleman filed his first petition, (2) the State conceded in its original response that no such ruling existed, and (3) the State served Coleman with its amended response that attached a copy of his motion with the handwritten, signed, and dated ruling. *See* Tex. R. App. P. 26.2 (setting notice of appeal due date), 26.3 (allowing an extension of

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23-15).” The copy of the docket sheet attached to the State’s motion contains most of the parenthetical but cuts off the full date, ending with “4-.”

fifteen days of due date upon filing of notice of appeal and motion reasonably explaining the need for an extension); *Swearingen v. State*, 189 S.W.3d 779, 780–81 (Tex. Crim. App. 2006) (holding appellate timetable for denial of motion for postconviction forensic DNA testing established by rules of appellate procedure). But given these extenuating circumstances, the deadline for filing a notice of appeal from the trial court’s ruling could be subject to extension.

Rule 4.6 of the rules of appellate procedure extends the appellate timetable for filing a notice of appeal from an adverse ruling on a motion for postconviction forensic DNA testing when neither the adversely affected defendant nor his attorney received notice or acquired actual knowledge of the appealable order within twenty days of its signing. Tex. R. App. P. 4.6. If, within 120 days after the signing of the appealable order, a defendant files a written, sworn motion for additional time to file a notice of appeal, stating (1) his desire to appeal, (2) the earliest date he or his attorney received notice or acquired actual knowledge that the trial judge signed the order, and (3) the occurrence of the earliest date more than twenty days after the trial judge signed the order, the trial judge must conduct a hearing on the motion and thereafter enter an order confirming the date from which the appellate timetable extends, if applicable. *See id.* “If a trial judge grants a defendant’s motion for additional time filed under this rule, the court of appeals may treat the defendant’s late-filed notice of appeal as timely or treat the motion for additional time itself as a notice of appeal for

the purpose of determining compliance with Rules 25.2 and 26.2.” *Id.* (Notes and Comments).

If the motion to extend post-judgment deadlines—that Coleman represents he filed on September 14, 2020—meets the criteria set forth in Rule 4.6 for a motion for additional time and the trial court grants the motion, this court may consider that motion itself to be a timely filed notice of appeal invoking our appellate jurisdiction. *See Torres v. State*, 575 S.W.3d 540, 541 (Tex. Crim. App. 2019) (per curiam) (order). If the appellate timetable is not subject to extension in this manner, Coleman cannot now file a timely notice of appeal, but his remedy is to file another motion for postconviction forensic DNA testing. *See id.*; *Davis v. State*, 502 S.W.3d 803, 803 (Tex. Crim. App. 2016) (per curiam) (order). Under either circumstance, he has an adequate remedy and there is no need for mandamus relief.

We therefore deny Coleman’s petitions for writ of mandamus.

/s/ Wade Birdwell

Wade Birdwell  
Justice

Delivered: November 12, 2020