



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00099-CR

IN RE FACUNDO VALDEZ, RELATOR

ORIGINAL PROCEEDING

March 18, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Relator Facundo Valdez, a prison inmate appearing pro se, filed a petition asking the court to issue a writ of mandamus ordering respondent, the Honorable John J. McClendon III, judge of the 137th District Court of Lubbock County, to rule on a motion seeking production of grand jury testimony from the year 2000. We will deny the petition.

The petition does not comply with the requirements set out in the Rules of Appellate Procedure. Specifically, it does not include the required certification that each of its factual statements is supported by competent evidence included in the appendix or record. See TEX. R. APP. P. 52.3(j). Additionally, the copies of documents attached

to the petition are not certified or sworn. See TEX. R. APP. P. 52.3(k)(1)(A) (appendix); 52.7(a) (record); *In re Bibbs*, 07-11-00393-CV, 2011 Tex. App. LEXIS 8192 (Tex. App.—Amarillo Oct. 13, 2011, orig. proceeding) (denying petition for writ of mandamus for noncompliance with appellate rule 52.3). For these reasons, relator’s petition must be denied.

Moreover, even had relator presented a petition in the proper form, on this record, relief could not be granted. To obtain relief by mandamus, a relator must show he has no adequate remedy at law and the action he seeks to compel is ministerial, rather than act of judicial discretion. *Bowen v. Carnes*, 343 S.W.3d 805, 810 (Tex. Crim. App. 2011) (orig. proceeding). When a relator complains the trial court failed or refused to hear and rule on a pending motion, his burden includes that of demonstrating the trial court had a legal duty to perform; performance was demanded; and the trial court refused to act. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979) (orig. proceeding). A trial court abuses its discretion when it fails to rule within a reasonable time on properly-presented pretrial motions. *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). A court is not required to consider a motion not called to its attention. *Metzger v. Sebek*, 892 S.W.2d 20, 49 (Tex. App.—Houston [1st Dist.] 1994, writ denied).

Among the documents attached to relator’s petition is what purports to be a copy of a hand-written letter dated December 3, 2015, from relator to the judge of the trial court “seeking information” on the status of his motion. Even if we presumed the letter was properly mailed or received by the trial court, we could not construe the letter as the

type of request for performance necessary to justify mandamus relief. *Stoner*, 586 S.W.2d at 846.

Relator's petition is denied.

Per Curiam

Do not publish.