



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

No. 07-17-00085-CV

IN RE ANTHONY JAMES, RELATOR

Original Proceeding
Arising From Proceedings Before the 137th District Court
Lubbock County, Texas
Trial Court No. 2006-411,486-B; Honorable John "Trey" J. McClendon III, Presiding

April 12, 2017

MEMORANDUM OPINION

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

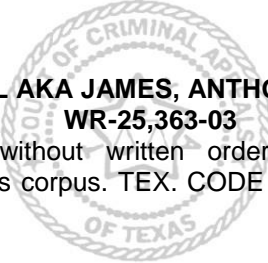
Proceeding *pro se* and *in forma pauperis*, Relator, Anthony James, seeks a writ of mandamus to compel the Honorable John "Trey" J. McClendon III to consider various motions attached to a post-conviction writ of habeas corpus filed January 5, 2016.¹ Specifically, those motions include (1) two separate Motions for Appointment of Counsel for Habeas Corpus, (2) Motion for New Trial, (3) Motion to Re-sentence, and (4) Motion

¹ Relator has two prior mandamus proceedings involving these same motions. See *In re James*, No. 07-16-00113-CR, 2016 Tex. App. LEXIS 9560 (Tex. App.—Amarillo Aug. 29, 2016, orig. proceeding); *In re James*, No. 07-16-00302-CR, 2016 Tex. App. LEXIS 3026 (Tex. App.—Amarillo March 23, 2016, orig. proceeding).

for Reformation of Judgment/Sentence. Relator complains that more than enough time has lapsed for the convicting court to consider his motions.

In his petition for writ of mandamus, Relator acknowledges that the trial court and Court of Criminal Appeals received his application for a writ of habeas corpus with his motions attached thereto in January 2016. Included with his petition is an unsigned copy of proposed *Findings of Fact and Conclusions of Law* wherein the State recommends dismissal of Relator's application for a writ of habeas corpus.

On February 10, 2016, without written order, the Court of Criminal Appeals dismissed Relator's application for a writ of habeas corpus pursuant to TEX. CODE CRIM. PROC. ANN. art. 11.07, § 4, pertaining to subsequent applications for habeas relief. However, Relator does not acknowledge or mention the dismissal in his quest for mandamus relief. This court surmises that Relator may not have received the postcard notice of the dismissal and has continued to pursue this matter for over a year. A copy of the postcard notice is provided below:

FILE COPY	
OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711	
2/10/2016 JAMES, ANTHONY DARRELL AKA JAMES, ANTHONY DONNELL Tr. Ct. No. 2006-411,486-B	
The Court has dismissed without written order this subsequent application for a writ of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).	
	Abel Acosta, Clerk
ANTHONY DARRELL JAMES MICHAEL UNIT - TDC #427293 P. O. BOX 4500 TENNESSEE COLONY, TX 75886	

MANDAMUS STANDARD OF REVIEW

Mandamus relief is extraordinary. *In re Braswell*, 310 S.W.3d 165, 166 (Tex. App.—Amarillo 2010, orig. proceeding) (citing *In re Southwestern Bell Telephone Co., L.P.*, 235 S.W.3d 619, 623 (Tex. 2007) (orig. proceeding)). “Mandamus issues only to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no other adequate remedy by law.” *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding) (quoting *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (orig. proceeding)). To show entitlement to mandamus relief, a relator must satisfy three requirements: (1) a legal duty to perform; (2) a demand for performance; and (3) a refusal to act. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979).

ANALYSIS

Relator has not demonstrated that he is entitled to mandamus relief. His application for a writ of a habeas corpus, which included the motions he complains of, was dismissed by the Court of Criminal Appeals on February 10, 2016. Consequently, the proceeding is not pending in the trial court and there is no controversy before it that might entitle Relator to mandamus relief.

CONCLUSION

We conclude Relator’s petition for writ of mandamus is moot.

Patrick A. Pirtle
Justice