



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

No. 07-17-00154-CV

IN RE CARLOS WAYNE TOOMBS, RELATOR

OPINION ON ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

July 14, 2017

MEMORANDUM OPINION

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

Relator, Carlos Wayne Toombs, has filed a petition for writ of mandamus wherein he requests that we order the Honorable Douglas Woodburn, 108th District Court, to appoint counsel and hold a hearing on his motion for DNA testing pursuant to Chapter 64 of the Texas Code of Criminal Procedure. The current motion for DNA testing is one of several that Toombs has filed over the years and which have been denied. We deny the petition.

Law and Analysis

Mandamus relief is appropriate to correct a clear abuse of discretion committed by a trial court when no adequate remedy by appeal exists. *In re Frank Kent Motor Co.*, 361 S.W.3d 628, 630 (Tex. 2012) (orig. proceeding); *In re Ramirez*, No. 07-13-00217-

CV, 2013 Tex. App. LEXIS 11374, at *2 (Tex. App.—Amarillo Sept. 4, 2013, orig. proceeding) (per curiam). Furthermore, the burden lies with the relator to establish his entitlement to the relief. *In re Ramirez*, 2013 Tex. App. LEXIS 11374, at *2. Relator has not satisfied these requirements.

First, rules of procedure obligate one seeking mandamus relief to accompany his petition with an appendix. TEX. R. APP. P. 52.3(k). The latter must include, among other things, a “certified or sworn copy of [the] document showing the matter complained of.” In this case, the document showing the matter complained of would be the motion for DNA testing. This was not provided to us via appendix or otherwise. Thus, it cannot be said that Toombs complied with the rules which he now seeks to enforce.

Next, because Toombs requests that we compel the trial court to appoint him counsel, hold a hearing, and provide him written findings, he effectively asks that we mandate the trial court to rule a certain way. That we cannot do. A district court may be compelled to consider and rule on a pending motion presented to the court. *See Simon v. Levario*, 306 S.W.3d 318, 321 (Tex. Crim. App. 2009). Yet, we cannot issue a writ of mandamus directing a court to rule in a particular way. *Id.*; *White v. Reiter*, 640 S.W.2d 586, 593-94 (Tex. Crim. App. 1982). Furthermore, the trial court ruled upon the motion at issue here. Thus, Relator has received the only relief we may grant regarding the motion for DNA testing. And, that the latter was denied renders moot the request of appointed counsel to prosecute the motion.

Finally, an order denying DNA testing is appealable. TEX. CODE CRIM. PROC. ANN. art. 64.05 (West 2006). Having an appeal afforded Toombs an adequate remedy

at law. And, having an adequate remedy at law negates one of the requisites for obtaining a writ of mandamus. *In re Frank Kent Motor Co. supra.*

For the foregoing reasons, Toombs' petition for writ of mandamus is denied.

Per Curiam