



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

No. 07-17-00207-CV

IN RE ANASTASIO VASQUEZ, RELATOR

OPINION ON ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

July 12, 2017

MEMORANDUM OPINION

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

Pending before the court is the petition for writ of mandamus filed by Anastasio Vasquez. He appears to ask us to direct (1) the district clerk of Lamb County to provide him documents he purportedly needs to prosecute his “affidavit of truth” (i.e., attack upon a final conviction), and (2) the trial court to rule upon his “affidavit of truth.”¹ We deny the petition.

Regarding the documentation from the district clerk, we lack the authority to issue a writ of mandamus against a district clerk unless the writ is necessary to protect

¹ His prayer for relief states: “Relator Anastacio [sic] Vasquez . . . respectfully request[s] this Court to compel Lamb County District Judge to rule on relator’s Affidavit of Truth Motion and direct the District Clerk to forward the requesting documents.”

our jurisdiction. See *In re James*, No. 07-16-00113-CV, 2016 Tex. App. LEXIS 3026, at *2 (Tex. App.—Amarillo Mar. 23, 2017, orig. proceeding) (per curiam) (mem. op.). Reviewing the allegations of Vasquez, we see that the information sought does not relate to an appeal or other matter properly pending before this court but, rather, a matter allegedly pending in a district court. Nor does he attempt to explain why mandamus directed at the district clerk is necessary to protect our jurisdiction. Thus, we are barred from acting upon this aspect of his request.

Regarding the district court’s alleged delay in acting upon the pending “affidavit of truth,” Vasquez failed to illustrate that the motion was presented to the trial court or that the trial court otherwise knew of it. Such was his burden. See *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). We cannot fault a trial court for failing to act upon a motion about which it has no knowledge. See *In re Castilleja*, No. 07-14-00225-CV, 2014 Tex. App. LEXIS 6696, at *5 (Tex. App.—Amarillo June 18, 2014, orig. proceeding) (per curiam) (mem. op.). And, it is not enough to simply show that the motion was filed with the trial court clerk. *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding); accord *In re Castilleja*, 2014 Tex. App. LEXIS 6696, at *5.

Accordingly, we deny the petition for a writ of mandamus.

Per Curiam