



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

No. 07-22-00046-CR

IN RE JESUS GONZALEZ, RELATOR

OPINION ON ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

February 18, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Pending before the Court is the second pro se petition for writ of mandamus filed by Jesus Gonzalez, relator. He again seeks a writ directing the Honorable Roland Saul, presiding judge of the 222nd District Court, Oldham County, to rule upon a pending motion to modify a prior final judgment and order of withdrawal from his inmate trust account. Modification of the judgment entails redaction from it of an order directing him to pay attorney's fees. Those fees allegedly were incurred by legal counsel appointed to assist in relator's defense. The order to withdraw funds permitted removal of sums from relator's inmate account to satisfy the cost of his court-appointed attorney. Allegedly, such an order was improper because the trial court did not find relator financially capable of paying same under article 26.05(g) of the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (stating that "[i]f the judge determines that a defendant has

financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant . . . the judge shall order the defendant to pay during the pendency of the charges or, if convicted, as a reimbursement fee the amount that the judge finds the defendant is able to pay”). We again deny the petition.

As with his earlier effort, nothing within the limited record relator supplied us establishes that the motion (or request for “status report” on same) was presented to the trial court or the court otherwise knew of the motion. Such a flaw in the record is fatal to relator’s attempt at securing relief. In *In re Chavez*, we said that “a trial court cannot be found to have abused its discretion until the complainant establishes that the court 1) had a legal duty to perform a non-discretionary act, 2) was asked to perform the act, and 3) failed or refused to do so.” 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding). A complaint criticizing alleged inaction of a court upon a pending motion “would necessarily require [the complainant] to illustrate that the trial court was aware of the motion.” *Id.* Merely filing the motion with the court’s clerk did not alone illustrate the court garnered the requisite knowledge or awareness. *Id.*

Other steps in illustrating entitlement to the equitable writ of mandamus went unsatisfied, as well. That is, the need to consider and rule upon a motion is not a discretionary act. *Id.* Rather, when the motion is properly filed and pending before a court, the act of considering and resolving it is ministerial. *Id.* However, the trial court has a reasonable time within which to perform. *Id.* Whether such a period lapsed without action depends upon the circumstances of each case. *Id.* Moreover, no bright line demarcates the boundaries of a reasonable period. *Id.* Its borders depend upon a myriad of criteria, not the least of which is the trial court’s actual knowledge of the motion, its

overt refusal to act on same, the state of the court's docket, and the existence of other judicial and administrative matters which must be addressed first. *Id.* at 228–29. So too must the trial court's inherent power to control its docket be factored into the mix. *Id.* at 229. Relator presented us with a deficient record touching upon these indicia, and it was his burden to do that. Consequently, he has not proved himself entitled to relief.

The petition for writ of mandamus is denied. The Clerk of this Court is directed to serve the Honorable Roland Saul with a copy of this order and the petition for writ of mandamus (and attachments thereto) it denies in a manner affording Judge Saul actual notice of same.

Per Curiam

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