



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

No. 07-22-00330-CR

IN RE DUSTIN KENDRICK, RELATOR

ORIGINAL PROCEEDING

December 1, 2022

MEMORANDUM OPINION

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

By this original proceeding, relator, Dustin Kendrick, an inmate proceeding pro se, seeks a writ of mandamus to compel the Honorable William R. Eichman II, presiding judge of the 364th District Court of Lubbock County, to consider and rule on two motions filed in trial court cause number 2010-427,528. We deny the petition as moot.

Kendrick identifies that he filed two separate "Petition[s] to Convene a Court of Inquiry" on April 14, 2021. Upon receipt, the Lubbock County District Clerk filed both petitions in Kendrick's prior criminal cause of action (trial court cause number 2010-427,528). On March 15, 2022, Kendrick filed two "Motion[s] to Correct a Misnomer" in which he sought orders from the district court that the district clerk file the previously filed

petitions in new cause numbers. On June 23, 2022, Kendrick filed “Motion[s] for Consideration” seeking rulings on his motions to correct a misnomer. Kendrick then filed “Second Motion[s] for Consideration” on August 23, 2022. All documents referenced in Kendrick’s mandamus petition and attached in its appendix were filed in trial court cause number 2010-427,528. The district court did not rule on any of Kendrick’s filings, which led him to file the instant petition for writ of mandamus on November 7, 2022.

By letter dated November 16, 2022, this Court requested that Judge Eichman file a response to Kendrick’s mandamus petition. Rather than filing a response, Judge Eichman filed three orders: “Order Denying [Kendrick’s] Petitions for Court of Inquiry & Motions to Correct a Misnomer,” “Order Denying [Kendrick’s] Petitions for Court of Inquiry–Edward Ray Keith & Motions to Correct a Misnomer,” and “Order Denying [Kendrick’s] Petitions for Court of Inquiry–Matthew D. Powell & Motions to Correct a Misnomer.” These orders collectively deny all relief requested by Kendrick in the proceedings underlying his mandamus request.

Mandamus relief is an extraordinary remedy. *In re Sw. Bell Tel. 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).

The orders filed by Judge Eichman dispose of Kendrick's petitions to convene a court of inquiry and related motions to correct a misnomer. As such, Judge Eichman has not "refused to act." While the duty to rule on pending motions is ministerial and subject to mandamus, dissatisfaction with particular rulings is not the proper subject of a mandamus proceeding. See *In re Washington*, No. 09-07-00246-CV, 2007 Tex. App. LEXIS 6449, at *2 (Tex. App.—Beaumont Aug. 16, 2007, orig. proceeding). Consequently, Kendrick's request for relief has been rendered moot and, consequently, we deny the petition for writ of mandamus.

Judy C. Parker
Justice

Do not publish.