



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00226-CR

IN RE: MICHAEL DEAN PERRY

Original Mandamus Proceeding

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

OPINION

Michael Dean Perry has filed a petition for writ of mandamus asking this Court to direct the trial court to proceed. On March 29, 2009, this Court affirmed Perry's conviction by the 188th Judicial District Court for the offense of tampering with physical evidence. He was sentenced to twenty-five years' imprisonment. However, as the State failed to prove the finality of one of the enhancement allegations against him, the sentence was five years above the maximum allowable punishment. We reversed and remanded for a new punishment trial. Perry filed a petition with the Texas Court of Criminal Appeals that was refused, and we issued our mandate on October 22, 2009.

Perry filed his petition for writ of mandamus, pointing out that he was in prison and that no punishment hearing had been conducted or was set to be conducted pursuant to the directive of this Court. He, therefore, argues that the ministerial duty of the trial judge to obey the directives of this Court has been violated and that we should direct the trial court to proceed to trial.

To establish entitlement to mandamus relief, the relator must show that (1) there is no adequate remedy at law to redress the alleged harm; and (2) only a ministerial act, not a discretionary or judicial decision, is being sought. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007). The execution of the mandate of this Court by the trial court is clearly a ministerial act.

We have contacted the District Clerk and the District Attorney's Offices of Gregg County. We have been informed that the information provided by Perry was accurate, but that his case has

now been set for trial January 25, 2010, and that a bench warrant was issued for Perry's presence for that trial. Based on this information, we conclude that the relief sought is now being provided.

We dismiss the petition as moot.

Jack Carter
Justice

Date Submitted: January 6, 2010
Date Decided: January 7, 2010

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