



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

No. 06-10-00021-CV

IN RE:
EDDIE KEVIN COLEMAN

Original Mandamus Proceeding

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion Per Curiam

MEMORANDUM OPINION

Eddie Kevin Coleman has filed a petition for writ of mandamus in which he asks this Court to order the 8th Judicial District Court of Hopkins County, Texas, to rule on his motion to dismiss for want of prosecution in trial court cause number CV34788. Coleman filed his motion to dismiss on December 2, 2008,¹ claiming the State brought a lawsuit for the seizure of \$2,240.00 in United States currency on September 7, 2002, and has failed to prosecute that action. Coleman claims that his motion to dismiss was not ruled upon within a reasonable time.

We may grant a petition for writ of mandamus when the relator shows there is no adequate remedy at law to redress the alleged harm and that the act to be compelled is purely ministerial. *Aranda v. Dist. Clerk*, 207 S.W.3d 785, 786 (Tex. Crim. App. 2006) (orig. proceeding) (citing *Winters v. Presiding Judge of Criminal Dist. Court No. Three*, 118 S.W.3d 773, 775 (Tex. Crim. App. 2003)). When a motion is properly filed and pending before a trial court, considering and ruling on that motion is a ministerial act and mandamus may issue to compel the trial court to act. *In re Kleven*, 100 S.W.3d 643, 644 (Tex. App.—Texarkana 2003, orig. proceeding); *see also Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding).

A trial court must consider and rule on a motion brought to the court's attention within a reasonable amount of time. *In re Bonds*, 57 S.W.3d 456, 457 (Tex. App.—San Antonio 2001,

¹A copy of the motion to dismiss for want of prosecution filed in trial court cause number CV34788 is attached as Appendix 1 to the petition for writ of mandamus. While this copy does not bear the clerk's file mark, the Clerk of the Hopkins County District Court for the 8th Judicial District has confirmed said motion was filed on December 2, 2008.

orig. proceeding). While we have jurisdiction to direct the trial court to proceed and rule, we may not tell the court what ruling it should make. *O'Donniley v. Golden*, 860 S.W.2d 267, 269–70 (Tex. App.—Tyler 1993, orig. proceeding).

Coleman's motion has been pending and ripe for a ruling for almost sixteen months.² Coleman is entitled to have a ruling on his motion. We, therefore, conditionally grant Coleman's petition for writ of mandamus. The writ will issue only if the trial court fails to rule on Coleman's motion within twenty-one days from the date of this opinion.

BY THE COURT

Date Submitted: March 30, 2010
Date Decided: March 31, 2010

²Appendix 2 to Coleman's petition is a notice of intent which advises the trial court of the pending motion to dismiss for want of prosecution and intent to file a petition for writ of mandamus to compel the trial court to act on said motion. The Clerk of the Hopkins County District Court for the 8th Judicial District has confirmed said notice of intent was filed on December 15, 2009.