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

No. 06-10-00101-CR

IN RE: GEORGE A. ELLIOTT

Original Mandamus Proceeding

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

MEMORANDUM OPINION

Seeking to gain access to records from his 1993 conviction, George A. Elliott has petitioned this Court for mandamus relief against both the District Clerk of Titus County and the 76th Judicial District Court in Titus County. Elliott asks that we order (1) the Titus County District Clerk to file a motion he claims to have sent the clerk, and (2) the trial court to rule or take action on his motion. We deny Elliott's petition.

(1) We Have No Mandamus Jurisdiction Over the District Clerk

Elliott's first ground asks us to issue a writ of mandamus directing the Titus County District Clerk to file his motion and present it to the trial court. This Court does not have mandamus jurisdiction over district clerks. *In re Rodriguez*, No. 06-08-00122-CV, 2008 Tex. App. LEXIS 7972 (Tex. App.—Texarkana Oct. 22, 2008, orig. proceeding) (mem. op.); *In re Coronado*, 980 S.W.2d 691, 692–93 (Tex. App.—San Antonio 1998, orig. proceeding) (per curiam) (for district clerk to fall within jurisdictional reach of court of appeals, must establish that mandamus is necessary to enforce court of appeals' jurisdiction). Because Elliott's first ground does not present a ground on which relief may be granted, we deny his request.

(2) Elliott Has Not Established His Right to Mandamus Relief Against the Trial Court

In his second ground, Elliott asks us to order the 76th Judicial District Court in Titus County to rule on his motion requesting a loan of his trial records. To be entitled to mandamus relief, a relator must show that he or she has no adequate remedy at law to redress the alleged harm

and that he or she seeks to compel a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). Considering a motion that is properly filed and before the court is a ministerial act. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (orig. proceeding). A relator must establish that the trial court (1) had a legal duty to rule on the motion, (2) was asked to rule on the motion, and (3) failed to do so. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding). A relator must show that the trial court received, was aware of, and asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). Filing something with the district clerk's office does not make the trial court aware of it; the clerk's knowledge is not imputed to the trial court. *Id*. at n.2.

Elliott has presented nothing to this Court establishing that he filed or presented the trial court with the motion at issue, that he requested a ruling on the matter, or that the trial court has failed to act in a reasonable time. We realize that, in Elliott's first ground for relief, he claims the district clerk has not filed the motion. However, he has presented us nothing beyond that bare allegation.

Even with proof of initial filing, however, such proof would not establish that the motion was brought to the trial court's attention or presented with a request for a ruling. *In re Blakeney*,

254 S.W.3d 659, 662 (Tex. App.—Texarkana 2008, orig. proceeding). Nonetheless, it is still Elliott's obligation to show that he asked the court to rule on the matter.

It is relator's responsibility to file the record with a petition for writ of mandamus. *See* TEX. R. APP. P. 52.7(a)(1) (requiring relator to file with petition certified or sworn copy of every document that is material to relator's claim for relief and that was filed in any underlying proceeding); *see also Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (per curiam) (to establish that trial court refused to rule on pending motion, relator must provide record showing that, after he filed his motion, relator asked trial court for hearing and ruling on his motion and trial court refused to hold hearing and to rule).

Even if Elliott had done all of the above, he has presented nothing in his petition suggesting the trial court has failed, for an unreasonable amount of time, to rule on his motion. The trial court has a reasonable time within which to perform its ministerial duty. *See Blakeney*, 254 S.W.3d at 661; *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). A trial court's refusal to rule on a pending motion within a reasonable amount of time constitutes a clear abuse of discretion. *See In re Shredder Co.*, 225 S.W.3d 676, 679 (Tex. App.—El Paso 2006, orig. proceeding) (citing *In re Greenwell*, 160 S.W.3d 286, 288 (Tex. App.—Texarkana 2005, orig. proceeding)). Whether a reasonable time has lapsed depends on the circumstances of each case. *Blakeney*, 254 S.W.3d at 662. "Determining what time period is reasonable is not subject to exact formulation. . . . Moreover, no bright line separates a

reasonable time period from an unreasonable one." *Id*. (citing *Keeter*, 134 S.W.3d at 253). Periods of eighteen months and thirteen months have been held to be too long for a trial court not to rule. *In re Ramirez*, 994 S.W.2d 682, 684 (Tex. App.—San Antonio 1998, orig. proceeding); *Kissam v. Williamson*, 545 S.W.2d 265 (Tex. Civ. App.—Tyler 1976, orig. proceeding) (per curiam).

In this case, Elliott claims sixty days have passed without a trial court ruling. As we said earlier, nothing on the copy of the motion Elliott attached to his petition suggests when the motion was mailed, filed, or presented to the trial court for a ruling. Even assuming, in light of the dearth of supporting documents described above, such a period has passed, Elliott presents nothing to argue such a period is unreasonable. In *Blakeney*, we were also presented with a lack of appropriate record. Nonetheless, we found that, even if Blakeney's timetable was correct, just under two months had passed since the initial filing of the motion in question. We found no showing that a reasonable time to rule had passed. *Blakeney*, 254 S.W.3d at 662. Furthermore, since the trial court's power to control its own docket is discretionary, a reviewing appellate court may not arbitrarily interfere with it. *See Ex parte Bates*, 65 S.W.3d 133, 135 (Tex. App.—Amarillo 2001, orig. proceeding); *Ho v. Univ. of Tex. at Arlington*, 984 S.W.2d 672, 693–94 (Tex. App.—Amarillo 1998, pet. denied) (court has inherent authority to control its own docket).

Because Elliott has not shown himself entitled to mandamus relief, we deny his petition.

Josh R. Morriss, III
Chief Justice

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

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