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

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No. 06-10-00106-CR

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IN RE: STEPHEN CLAY JOHNSTON

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Original Mandamus Proceeding

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

MEMORANDUM OPINION

While incarcerated in the Lamar County Jail for a third DWI conviction, Stephen Clay Johnston filed a "Motion for Access of Courts" requesting the trial court "grant defendant access to courts by allowing him to utilize the law library provided by the county" in order to prepare future small claim lawsuits for filing and prosecute a pending small claim. Johnston filed this petition for writ of mandamus complaining that the trial court "has refused to answer this motion."

Mandamus is an extraordinary remedy that issues only to correct a clear abuse of discretion or violation of a duty imposed by law when no other adequate remedy by law is available. *State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984). Due to the nature of this remedy, it is Johnston's burden to properly request and show entitlement to the mandamus relief. *See generally Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (orig. proceeding); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) ("Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.").

As the sole document included in his record, Johnston attached a file-marked copy of his motion, which contained a certificate of service requesting a copy of the motion be sent to the district judge. Consideration of 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). However, Johnston must show that the trial court received, was aware of, and was asked to rule on the motion. *In re Grulkey*, No. 14-10-00450-CV, 2010 WL 2171408, at *1 (Tex. App.—Houston

[14th Dist.] May 28, 2010, orig. proceeding) (citing *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 mean the trial court is aware of it; nor is the clerk's knowledge imputed to the trial court." *Id.* (citing *Villarreal*, 96 S.W.3d at n.2); *see also In re Blakeney*, 254 S.W.3d 659, 662 (Tex. App.—Texarkana 2008, orig. proceeding) ("Showing that a motion was filed with the court clerk does not constitute proof that the motion was brought to the trial court's attention or presented to the trial court with a request for a ruling.").

We deny Johnston's petition for writ of mandamus.

Jack Carter
Justice

Date Submitted: June 17, 2010
Date Decided: June 18, 2010

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