



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

No. 06-16-00035-CR

IN RE DAVID DEWAYNE REECE

Original Mandamus Proceeding

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

MEMORANDUM OPINION

David Dewayne Reece, proceeding pro se, has filed a petition seeking a writ of mandamus in which he asks this Court to compel the trial court to remove the court costs from his judgment of conviction. We deny the requested relief.

Reece was convicted and sentenced to twenty years' incarceration August 2, 2010. The judgment included an assessment of court costs. Reece recounts that an order to withdraw funds (typically termed "notice of withdrawal") was appended to the judgment.¹ On February 22, 2016, Reece filed a "Motion for Removal of Court Cost" in the trial court. According to Reece, the trial court violated his due process rights by rendering the notice of withdrawal of funds without giving him prior notice and an opportunity to be heard. Reece further complains that court costs should not have been assessed by the trial court in the first instance because he is, and was, indigent.

To be entitled to mandamus relief, the relator must show that he has no adequate remedy at law and that the action he seeks to compel is ministerial, 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). The relator is obligated to provide this Court with a record sufficient to establish his right to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); *In re Pilgrim's Pride Corp.*, 187 S.W.3d 197, 198–99 (Tex. App.—Texarkana 2006, orig. proceeding); see TEX. R. APP. P. 52.3. Before mandamus may issue, the relator must show that the trial court had a legal duty to perform a ministerial act, was

¹Reece did not provide a record in conjunction with his petition.

asked to do so, and failed or refused to act. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding); *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.”). Reece has provided this Court with neither a copy of a motion or other pleading filed in the trial court nor any evidence that such motion or pleading was brought to the trial court’s attention and that a ruling was requested. Consequently, Reece has failed to demonstrate that he is entitled to mandamus relief.²

We deny Reece’s petition for a writ of mandamus.

Josh R. Morriss, III
Chief Justice

Date Submitted: April 4, 2016
Date Decided: April 5, 2016

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²Based on Reece’s allegations, it is doubtful that—even had a record been filed—he would be entitled to mandamus relief.