



IN THE  
TENTH COURT OF APPEALS

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No. 10-09-00425-CR

IN RE ROGER DALE THOMISON

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Original Proceeding

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MEMORANDUM OPINION

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Roger Dale Thomison, an inmate at a federal penitentiary, seeks by mandamus to compel the McLennan County District Attorney to “perform his ministerial duty” and dismiss the criminal case pending against Thomison. There are procedural problems in this proceeding, but we use Rule 2 to look beyond those problems. *See* TEX. R. APP. P. 2.

Thomison alleges in his petition that a detainer has been lodged against him and that he has filed the necessary paperwork pursuant to the Interstate Agreement on Detainers Act in an attempt to resolve the pending criminal charge. He further alleges that the District Attorney has taken no action on his case, that the 180 day time limit within which to prosecute him has passed, and that the District Attorney has not dismissed the case against Thomison.

This Court has mandamus jurisdiction over a judge of a district or county court or when necessary to enforce our own jurisdiction. TEX. GOV'T. CODE ANN. § 22.221(a), (b) (Vernon 2004). Thomison has alleged nothing in his petition to suggest that issuance of a writ is necessary to enforce our jurisdiction. Thus, we do not have jurisdiction to mandamus the District Attorney in this circumstance. See, e.g. *In re Spivey*, No. 10-09-00263-CV, 2009 Tex. App. LEXIS 6861 (Tex. App.—Waco Aug. 26, 2009, orig. proceeding); see also *Silva v. Klevenhagen*, 833 S.W.2d 746, 747 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding).

Accordingly, Thomison's petition is dismissed.<sup>1</sup> Further Thomison's motion for leave to file a single copy of his petition is dismissed as moot.

TOM GRAY  
Chief Justice

Before Chief Justice Gray,  
Justice Reyna, and  
Justice Davis  
Petition dismissed  
Motion dismissed  
Opinion delivered and filed January 13, 2010  
Do not publish  
[OT06]

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<sup>1</sup> The County Clerk sent correspondence to Thomison on January 5, 2010 and copied this Court. Included with the correspondence is a copy of an order signed on August 5, 2009 which dismissed the charges about which Thomison complains. Thus, the substantive merits of the complaint appear to be moot.