



IN THE
TENTH COURT OF APPEALS

No. 10-10-00281-CR

IN RE WILLIAM JOSEPH HORTON

Original Proceeding

MEMORANDUM OPINION

William Joseph Horton seeks a writ of mandamus compelling Respondent, the Honorable Matt Johnson, Judge of the 54th District Court of McLennan County, to send a copy of the judgment and sentence in his case to the Texas Department of Criminal Justice and to award him credit for time served. We will deny Horton's mandamus petition.¹

There are three prerequisites for the granting of mandamus relief: (1) the lower court must have a legal duty to perform a nondiscretionary act; (2) the relator must make a demand for performance; and (3) the subject court must refuse that request. *In*

¹ We apply Rule of Appellate Procedure 2 and disregard Horton's failure to include a proper certification in his mandamus petition. *See* TEX. R. APP. P. 2, 52.3(j).

re Smith, No. 01-10-00030-CR, 2010 WL 2723145, at *1 (Tex. App.—Houston [1st Dist.] July 2, 2010, orig. proceeding) (per curiam) (not designated for publication); *accord In re State*, 304 S.W.3d 581, 583 (Tex. App.—El Paso 2010, orig. proceeding); *In re Chu*, 134 S.W.3d 459, 467 (Tex. App.—Waco 2004, orig. proceeding).

Here, the mandamus record contains nothing to indicate that Horton has requested Respondent to send a copy of the judgment and sentence to TDCJ or has notified Respondent that he has not been awarded credit for all creditable time served.

Because Horton has not made a demand for performance, we deny his mandamus petition. *Id.*

FELIPE REYNA
Justice

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis

Petition denied
Opinion delivered and filed August 11, 2010
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