



IN THE
TENTH COURT OF APPEALS

No. 10-11-00028-CR

IN RE SCOTT EDWARD MAY

Original Proceeding

MEMORANDUM OPINION

Scott Edward May requests this Court by petition for writ of mandamus to compel the trial court to rule on May's Motion Nunc Pro Tunc. There are procedural problems with May's petition, most notably that the petition is not certified and the record is not certified or sworn. *See* TEX. R. APP. P. 52.3(j), (k); 52.7(a). However, we use Rule 2 to look beyond the procedural problems and deny the petition on its merits because May has presented no evidence that he properly brought the motion nunc pro tunc to the trial court's attention and that the trial court refused to rule. TEX. R. APP. P. 2; *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding).

May's petition for writ of mandamus is denied. Further, his motion for leave to file the petition for writ of mandamus is dismissed as moot.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Petition denied

Opinion delivered and filed February 9, 2011

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[OT06]