



IN THE
TENTH COURT OF APPEALS

No. 10-11-00336-CR

IN RE MICHAEL ANTHONY MOORE

Original Proceeding

MEMORANDUM OPINION

Michael Anthony Moore, a prison inmate, seeks a writ of mandamus to compel the Honorable Marc Hamlin, District Clerk of Brazos County, to provide information Moore requested and to return a file stamped copy of a letter and request for a docket sheet. Moore also seeks a writ of mandamus to compel the Honorable Travis B. Bryan, III, Judge of the 272nd Judicial District Court, to rule on Moore's motion to recuse Judge Bryan and Moore's motion for DNA testing. It appears both motions may have been pending since June 6, 2011.

There are numerous procedural problems with this petition including, but not limited to, 1) the petition was not served on the real party in interest, TEX. R. APP. P. 9.5; 52.2; 2) Moore is trying to mandamus a judge he has sought to recuse; 3) Moore has not

shown that he presented those motions to the trial court, *see In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding); and 4) Moore has not attached any document on which his petition relies. *See* TEX. R. APP. P. 52.3(k). However, we use Rule 2 to look past these and the other deficiencies and dispose of Moore’s petition. TEX. R. APP. P. 2.

We deny Moore’s petition as to the District Clerk because the allegations as to the Clerk do not have the effect of interfering with our jurisdiction. *See* TEX. GOV'T CODE ANN. § 22.221(a) (West 2004).

Further, we deny Moore’s petition as to the trial court because three months is not sufficient time to say the trial court has abused its discretion, especially when the motion to recuse must be acted on before the motion for DNA testing. *See* TEX. R. CIV. P. 18a(c); *In re Chavez*, 62 S.W.3d at 229.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Petition denied
Opinion delivered and filed September 21, 2011
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