



IN THE
TENTH COURT OF APPEALS

No. 10-15-00452-CR

IN RE MICHAEL ATHONY (ANTHONY) MOORE

Original Proceeding

MEMORANDUM OPINION

In this original proceeding,¹ Relator Michael Athony Moore seeks mandamus relief in the form of compelling the Respondent trial court judge to rule on a post-conviction motion. Moore alleges that his motion has been pending for a reasonable time after being brought to the trial court judge's attention.

"A court with mandamus authority 'will grant mandamus relief if relator can demonstrate that the act sought to be compelled is purely 'ministerial' and that relator

¹ The petition for writ of mandamus lacks proof of service on the State. A copy of all documents presented to the Court must be served *on all parties* (*i.e.*, the trial court judge and the State through the district attorney in this proceeding) and must contain proof of service. TEX. R. APP. P. 9.5, 52.2. The petition also lacks most of the contents required by Rule 52. *Id.* R. 52.3. It does not include the certification required by Rule of Appellate Procedure 52.3(j). *Id.* R. 52.3(j). To expedite this matter, we invoke Rule of Appellate Procedure 2 to suspend these requirements. *Id.* R. 2.

has no other adequate legal remedy.'" *In re Piper*, 105 S.W.3d 107, 109 (Tex. App.—Waco 2003, orig. proceeding) (quoting *State ex rel. Rosenthal v. Poe*, 98 S.W.3d 194, 197-99 (Tex. Crim. App. 2003) (orig. proceeding)). Consideration of a motion properly filed and before the court is ministerial. *State ex rel. Hill v. Ct. of Apps. for the 5th Dist.*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001) (orig. proceeding).

Mandamus may issue to compel a trial court to rule on a motion which has been pending before the court for a reasonable period of time. See *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding); *In re Keeter*, 134 S.W.3d 250, 252-53 (Tex. App.—Waco 2003, orig. proceeding); *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding); see also *In re Shredder Co.*, 225 S.W.3d 676, 679 (Tex. App.—El Paso 2006, orig. proceeding). To obtain mandamus relief for such refusal, a relator must establish: (1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule. See *Hearn*, 137 S.W.3d at 685; *Keeter*, 134 S.W.3d at 252; *Chavez*, 62 S.W.3d at 228; *Barnes*, 832 S.W.2d at 426; see also *Shredder Co.*, 225 S.W.3d at 679. The mere filing of a motion with a trial court clerk does not equate to a request that the trial court rule on the motion. See *Hearn*, 137 S.W.3d at 685; *Chavez*, 62 S.W.3d at 228; *Barnes*, 832 S.W.2d at 426; cf. *Shredder Co.*, 225 S.W.3d at 680 ("Relator has made repeated requests for a ruling on its motion.").

In re Sarkissian, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding).

A trial judge has a reasonable time to perform the ministerial duty of considering and ruling on a motion properly filed and before the judge. *Chavez*, 62 S.W.3d at 228. But that duty generally does not arise until the movant has brought the motion *to the trial judge's attention*, and mandamus will not lie *unless the movant makes such a showing* and the trial judge then fails or refuses to rule within a reasonable time. See *id.*

Moore's petition states that he was convicted of burglary and was sentenced to

sixty years in prison. Prior proceedings filed by Moore indicate that he was convicted in 1988. Moore's petition states that he seeks an order directing the Respondent trial court judge to rule on "defendant's trial brief on state's failure to amend the indictment." Moore's appendix includes a February 25, 2015 letter to the district clerk tendering this document for filing and a December 20, 2015 letter to the Respondent trial court judge that brings the matter to his attention.

In an original proceeding, a relator is required to file a record that contains a certified or sworn copy of every material document—in this case, that would include the "motion" that Moore seeks a ruling on. TEX. R. APP. P. 52.7(a)(1). This requirement is particularly important in this original proceeding because, based on the title of the motion—"defendant's trial brief on state's failure to amend the indictment"—we have grave doubts on whether it is a "motion properly filed." Moore's failure to file a record containing the underlying "motion" is fatal to his request for mandamus relief.

Furthermore, Moore allegedly brought this matter to the attention of the Respondent trial court judge on December 20, 2015 and filed his petition for writ of mandamus on December 31, 2015. Even if Moore's "motion" is "properly filed," it has not been pending for a reasonable time after having been brought to the attention of the Respondent trial court judge.

For these reasons, we deny the petition for writ of mandamus.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
(Chief Justice Gray concurring with a note)*

Petition denied

Opinion delivered and filed January 14, 2016

Do not publish

[OT06]

*(Chief Justice Gray would summarily deny the petition for writ of mandamus and concurs in only the judgment doing so. We have previously explained all this to Moore. See *In re Moore*, 10-14-00238-CR, Sept. 4, 2014 and *In re Moore*, 10-13-00420-CR, Dec. 19, 2013. It is now clear to me that we are wasting our resources responding to the frivolous proceedings being filed by Moore.)

