



**IN THE
TENTH COURT OF APPEALS**

No. 10-20-00199-CR

IN RE DONALD KEELING

Original Proceeding

**ORDER OF WITHDRAWAL
AND
MEMORANDUM OPINION**

Our opinion granting Donald Keeling's Petition for Writ of Mandamus, rendered on August 21, 2020, and judgment issued on the same date, are withdrawn and this memorandum opinion and judgment dismissing Keeling's petition are substituted in their place.

Keeling sought a writ of mandamus to compel the trial court to rule on a motion for a free record which was filed with the trial court clerk but had not yet been ruled on by the trial court.

We requested a response on August 3, 2020 from the Respondent, the trial court, or the Real-Party-in-Interest, the State, but did not receive any response. Consequently, this Court conditionally granted the requested writ of mandamus, confident that the Respondent would promptly consider and rule on Keeling's motion. The writ would issue only if the Respondent failed to advise this Court within 30 days from the date of the opinion that the Respondent had ruled on the motion.

We received and filed the Respondent's Order on Motion for Free Copies of Records on September 16, 2020. Not only did the Respondent rule on Keeling's motion, the Respondent granted Keeling's motion.

We are dismayed to discover through a footnote in the order, however, that the Respondent never received any documentation regarding this mandamus proceeding from this Court until the Opinion conditionally granting the writ was rendered and delivered to the Respondent. That is, the Respondent never received notification that the petition for writ of mandamus was filed and never received the request for a response issued by this Court. This was due to an error on our part. Upon reading the Respondent's order, we discovered that this proceeding was not entered in our case management system in a way that indicated the Respondent was a party to the proceeding and, individually, needed notice. The District Attorney was erroneously entered in the system as the representative of the Respondent and thus, was the only "party" given notice besides Keeling. For this error, the Court sincerely apologizes to the Respondent. We have implemented procedures which should prevent this kind of error from happening in the future.

Accordingly, because the Respondent has ruled on Keeling's motion, Keeling's Petition for Writ of Mandamus, filed on July 29, 2020 is dismissed as moot.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins¹

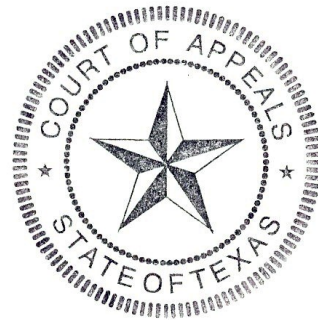
Opinion withdrawn

Mandamus dismissed as moot

Opinion delivered and filed September 23, 2020

Do not publish

[OT06]



¹ The Honorable Al Scoggins, Senior Justice of the Tenth Court of Appeals, sitting by assignment of the Chief Justice of the Texas Supreme Court. *See* TEX. GOV'T CODE §§ 74.003, 75.002, 75.003.