

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-15-00710-CV**

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**In re Joseph Urtado**

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**ORIGINAL PROCEEDING FROM TRAVIS COUNTY**

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**MEMORANDUM OPINION**

Relator Joseph Urtado, an inmate proceeding pro se, has filed a petition for writ of mandamus, asking this Court to compel the 403rd District Court of Travis County to rule on his motion to modify and rescind the district court's order to withdraw funds from his inmate account. To be entitled to mandamus relief, a relator must establish that: (1) he has no other adequate legal remedy to redress the alleged harm, and (2) under the relevant facts and law, the act sought to be compelled is purely ministerial.<sup>1</sup> An act is ministerial if it does not involve the exercise of any discretion and the relator has a clear right to relief.<sup>2</sup> The relief sought must be clear and indisputable, such that its merits are beyond dispute.<sup>3</sup>

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<sup>1</sup> *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding); *State ex rel. Hill v. Court of Appeals for Fifth Dist.*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001) (orig. proceeding).

<sup>2</sup> *Hill*, 34 S.W.3d at 927; *In re Daisy*, 156 S.W.3d 922, 924 (Tex. App.—Dallas 2005, orig. proceeding).

<sup>3</sup> *See Hill*, 34 S.W.3d at 927-28; *Daisy*, 156 S.W.3d at 924.

“‘[C]onsideration of a motion properly filed and before the court is ministerial.’”<sup>4</sup>

When a mandamus petition is based on an allegation that a trial court has failed to rule on a properly filed motion, the relator will not be entitled to mandamus relief unless he establishes that the trial court: (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) either refused to rule on the motion or failed to rule within a reasonable time.<sup>5</sup>

What is considered a reasonable amount of time depends on the circumstances of each case.<sup>6</sup> No bright-line rule demarcates the boundaries of a reasonable time period.<sup>7</sup> “Many indicia are influential, not the least of which are the trial court’s actual knowledge of the motion, its overt refusal to act on same, the state of the court’s docket, and the existence of other judicial and administrative matters which must be addressed first.”<sup>8</sup> “So too must the trial court’s inherent power to control its own docket be included in the mix.”<sup>9</sup> Moreover, the relator has the burden to provide us with a record sufficient to establish his right to mandamus relief.<sup>10</sup> Accordingly, in this case,

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<sup>4</sup> *Hill*, 34 S.W.3d at 927 (quoting *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987) (opinion on reh’g))

<sup>5</sup> *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App.—Waco 2003, orig. proceeding); *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

<sup>6</sup> *In re Blakeney*, 254 S.W.3d 659, 662 (Tex. App.—Texarkana 2008, orig. proceeding).

<sup>7</sup> *Ex parte Bates*, 65 S.W.3d 133, 135 (Tex. App.—Amarillo 2001, orig. proceeding).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See In re Davidson*, 153 S.W.3d 490, 491 (Tex. App.—Amarillo 2004, orig. proceeding); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding).

Urtado is required to show that a properly filed motion has awaited disposition for an unreasonable period of time.<sup>11</sup>

Here, the record reflects that Urtado delivered his motion to prison officials for mailing on August 21, 2015, approximately three months ago. Even assuming that the district court received the motion shortly thereafter, three months does not ordinarily constitute an unreasonable length of time for a motion to remain pending.<sup>12</sup> Moreover, Urtado has failed to provide this Court with any documentation indicating when the motion was filed with the district court or that the district court was asked to rule on the motion but refused to do so. On this record, we cannot conclude that Urtado is entitled to the extraordinary relief requested.

The petition for writ of mandamus is denied.

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Bob Pemberton, Justice

Before Chief Justice Rose, Justices Pemberton and Field

Filed: November 24, 2015

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<sup>11</sup> See *Blakeney*, 254 S.W.3d at 661; see also Tex. R. App. P. 52.7(a)(1) (relator must file with petition “a certified or sworn copy of every document that is material to the relator’s claim for relief and that was filed in any underlying proceeding”), (2) (relator must file with petition “a properly authenticated transcript of any relevant testimony from any underlying proceeding”).

<sup>12</sup> See, e.g., *Blakeney*, 254 S.W.3d at 662-63; *Villarreal*, 96 S.W.3d at 711; *Bates*, 65 S.W.3d at 136; *In re Chavez*, 62 S.W.3d 225, 229 (Tex. App.—Amarillo 2001, orig. proceeding); see also *In re Halley*, No. 03-15-00310-CV, 2015 Tex. App. LEXIS 7188, at \*4 (Tex. App.—Austin July 14, 2015, orig. proceeding) (mem. op.); *In re Gonzales*, No. 07-06-00324-CV, 2006 Tex. App. LEXIS 8057, at \*3 (Tex. App.—Amarillo Sept. 6, 2006, orig. proceeding) (mem. op.); *In re Garcia*, No. 04-09-00123-CR, 2009 Tex. App. LEXIS 1541, at \*1-2 (Tex. App.—San Antonio Mar. 11, 2009).