

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00100-CV

In re Christopher Medina

ORIGINAL PROCEEDING FROM BELL COUNTY

MEMORANDUM OPINION

Relator Christopher Medina has filed a document, which this Court filed as a petition for writ of mandamus, requesting assistance in obtaining good-time credit against a two-year state-jail sentence. *See* Tex. R. App. P. 52.

Some of the documents attached by Medina reference HB 2649, which amended article 42.12, section 15(h) of the code of criminal procedure and explained how a defendant convicted of a state-jail felony might be awarded “diligent participation credit” against his sentence. *See* Act of May 24, 2011, 82d Leg., R.S., ch. 542, § 1, 2011 Tex. Gen. Laws 1331, 1331-32 (codified at Tex. Code Crim. Proc. art. 42.12, § 15(h)); *see also id.* § 2, 2011 Tex. Gen. Laws at 1332 (HB 2649 only applies to person confined in state jail for offense committed on or after September 1, 2011). However, article 42.12 was repealed effective January 1, 2017, and the provisions related to such credit are now located in article 42A.559. *See* Act of May 26, 2015, 84th Leg., R.S., ch. 770, §§ 1.01, 3.01, 2015 Tex. Gen. Laws 2321, 2355-56, 2395.

Under article 42A.559, a defendant confined in a state jail is entitled to credit for time served in a county jail between arrest and sentencing and for time spent in a substance-abuse

facility or other court-ordered residential program. Tex. Code Crim. Proc. art. 42A.559(c). A judge may also award a defendant in state jail credit for time spent “diligently participat[ing] in any educational, vocational, treatment, or work program,” based on a report provided by the Texas Department of Criminal Justice. *Id.* art. 42A.559(e), (f). However, such credits are “a privilege and not a right.” *Id.* art. 42A.559(f).

To be entitled to mandamus relief, a criminal defendant must show that the act he seeks to compel is ministerial and not discretionary and that he lacks any other adequate remedy. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007); *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991). Medina seeks assistance in obtaining credits that are “a privilege and not a right.” *See* Tex. Code. Crim. Proc. art. 42A.559(f). Therefore, he has not shown that the trial court has failed to fulfill a ministerial duty. *See Young*, 326 S.W.3d at 210. We deny Medina’s petition for writ of mandamus. *See* Tex. R. App. P. 52.8(a).

David Puryear, Justice

Before Justices Puryear, Pemberton, and Goodwin

Filed: May 4, 2017