

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00383-CV

In re Robert Lee Martin

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

MEMORANDUM OPINION

Relator Robert Lee Martin has filed a pro se petition for writ of mandamus asking this Court to compel the Honorable Karen Sage, presiding judge of the 299th Judicial District Court of Travis County, to rule on his application for writ of habeas corpus. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52.1. We deny the petition.

To obtain mandamus relief for the trial court's refusal to rule on a motion, 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. *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding) (mem. op.); *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (per curiam) (applying these principles in case involving refusal to rule on application for writ of habeas corpus). A relator must show that the trial court received, was aware of, and was asked to rule on the motion. *In re Blakeney*, 254 S.W.3d 659, 661-62 (Tex. App.—Texarkana 2008, orig. proceeding);

In re Villarreal, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding); *Barnes*, 832 S.W.2d at 426.

It is relator's burden to properly request and show entitlement to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); *In re Davidson*, 153 S.W.3d 490, 491 (Tex. App.—Amarillo 2004, orig. proceeding); *see also Barnes*, 832 S.W.2d at 426 (“Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.”). In this regard, the relator must provide the reviewing court with a record sufficient to establish his right to mandamus relief. *See Walker*, 827 S.W.2d at 837; *In re Blakeney*, 254 S.W.3d at 661-62; *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”), 52.7(a) (specifying required contents for record), 52.3(k) (specifying required contents for appendix).

Martin asserts in his petition that he filed an application for writ of habeas corpus in the 299th District Court of Travis County, but he does not state when he filed the application. In addition, Martin has failed to provide this Court with a file-stamped copy of the application or any other documents to show that it is pending before the trial court. Consequently, there is no way for us to determine whether the writ application was properly filed or, if it was, the date on which it was received by the clerk’s office. Even if we assume that the application was properly filed, Martin has not demonstrated that the application has been brought to the trial court’s attention or that the court is aware of the application. *See In re Hearn*, 137 S.W.3d at 685 (simply filing matter with district clerk is not sufficient to impute knowledge of pending pleading to trial court). He has failed to

provide any file-marked correspondence to the district court requesting a ruling on the application or any other file-marked document that shows that he brought the application to the attention of the trial court. *See In re Sarkissian*, 243 S.W.3d at 861 (mere filing of motion with trial-court clerk does not constitute request that trial court rule on motion). Furthermore, Martin has failed to provide anything indicating that the trial court has refused to rule on the application or has failed to rule within a reasonable time.

Absent a showing that the trial court is aware of the application, has been asked to rule on the application, and has refused to do so, Martin has not established entitlement to the extraordinary relief of a writ of mandamus. *See In re Lucio*, No. 03-12-00056-CV, 2012 WL 593533, at *2 (Tex. App.—Austin Feb. 23, 2012, orig. proceeding) (mem. op.) (mandamus relief denied because relator failed to provide copy of motion, any correspondence to district court requesting ruling on motion, or anything indicating district court refused to rule on motion). Accordingly, we deny the petition for writ of mandamus. *See Tex. R. App. P. 52.8.*

Cindy Olson Bourland, Justice

Before Justices Puryear, Field, and Bourland

Filed: August 8, 2017