



NUMBER 13-11-00623-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE JOSE VILLELA

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Garza and Benavides
Memorandum Opinion Per Curiam¹

Relator, Jose Villela, has filed a petition for writ of mandamus alleging that the Honorable Tom Greenwell, presiding judge of the 319th Judicial District Court of Nueces County, Texas, abused his discretion by failing to rule on a "Petition for Factual Records" and a "DNA Motion" filed by relator.

For purposes of establishing that the trial court has abused its discretion in failing to rule on a motion, the complainant must establish that the trial court: (1) had a legal

¹ See TEX. R. APP. P. 52.8(d) ("When denying [mandamus] relief, the court may hand down an opinion but is not required to do so.").

duty to perform a nondiscretionary act, (2) was asked to perform the act, and (3) failed or refused to do so. *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding); see *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding).

Relator asserts that more than ninety days have passed since he filed the subject motions. However, relator has not provided us with a record establishing that his motions were properly filed, or that the trial court was asked and failed to rule on them. Without such a record, we cannot conclude that the trial court abused its discretion. See *In re Molina*, 94 S.W.3d at 886; *In re Chavez*, 62 S.W.3d at 228.

Having reviewed and fully considered relator's petition, this Court is of the opinion that relator has not shown himself entitled to the relief requested and that the petition should be denied. See TEX. R. APP. P. 52.8(a). Accordingly, relator's petition for writ of mandamus is DENIED.

PER CURIAM

Do Not Publish.
See TEX. R. APP. P. 47.2(b).

Delivered and filed the
18th day of October, 2011.