

**NOS. 12-11-00258-CR
12-11-00259-CR**

**IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS**

IN RE: §
ROBERT BULLOCK, § **ORIGINAL PROCEEDING**
RELATOR §

**MEMORANDUM OPINION
PER CURIAM**

Relator Robert Bullock complains that the trial court has failed to rule on his motion for new trial within a reasonable time. He alleges that he filed the motion on August 11, 2011, and that the trial court considered the motion, but returned the order to the district clerk without signing it.¹

To demonstrate entitlement to a writ of mandamus in a criminal case, a relator must establish that (1) the trial court failed to perform a duty that is purely ministerial under the facts and the law, and that (2) the relator has no other adequate legal remedy. *State ex rel. Hill v. Fifth Court of Appeals*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001) (orig. proceeding).

A trial court has no duty to rule on a motion for new trial. *See* TEX. R. APP. P. 21.8(c) (motion for new trial deemed denied if not timely ruled on by written order before expiration of seventy-five days after imposition or suspension of sentence in open court). Moreover, a defendant in a criminal case must file a motion for new trial not later than thirty days after the date the trial court imposes or suspends sentence in open court. TEX. R. APP. P. 21.4(a). Here, Relator did not furnish a record showing when his sentence was imposed or suspended. However, he admits that his motion was an “Out-of-Time Motion for New Trial.” We interpret

¹ The respondent is the Honorable Guy W. Griffin, Judge of the 123rd Judicial District Court, Shelby County, Texas.

this as a concession that he filed the motion outside the thirty day time period for filing a motion for new trial. *See* TEX. R. APP. P. 21.4(a). Because Relator's motion was not timely filed, the trial court has no authority to rule on the motion. *See Drew v. State*, 743 S.W.2d 207, 223 (Tex. Crim. App. 1987). Therefore, even if a trial court generally has a duty to rule on a motion for new trial, the respondent trial court has no power to do so under the facts presented here.

Relator has not shown that the trial court failed to perform a ministerial duty. Consequently, he cannot show that he is entitled to mandamus relief. Relator's petition for writ of mandamus is *denied*.

Opinion delivered November 9, 2011.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)