

NO. 12-12-00012-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE: §
WAYNE ERNEST BARKER, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION

Relator Wayne Ernest Barker seeks a writ of mandamus directing the trial court to vacate its order to withdraw funds from Relator's trust account and to repay the amount already withdrawn from the account. We deny the petition.

BACKGROUND

Relator pleaded guilty to assault of a public servant. The agreed plea recommendation provided, in part, that no fine would be imposed, but included a notation that court costs were \$290.00. The trial court issued an order directing the Texas Department of Criminal Justice (TDCJ) to withdraw \$290.00 from Relator's inmate trust account for court costs assessed against him. Relator then received a notice from TDCJ that the funds had been withdrawn from his trust account.

DISCUSSION

To be entitled to mandamus relief, a relator must demonstrate that (1) the trial court clearly abused its discretion, and (2) the relator has no adequate remedy by appeal. *In re McAllen Ctr., Inc.*, 275 S.W.3d 458, 462 (Tex. 2008) (orig. proceeding). Relator complains that he was not informed that liability for court costs would be a consequence of his guilty plea and that he learned of his liability only after receiving notice of the withdrawal from his trust

account. He questions in this proceeding (1) whether court costs were part of his criminal sentence and (2) whether the requirements of due process were satisfied by notice of the withdrawal 102 days after conviction and subsequent mandatory assessment of criminal court costs. In his argument, he implicitly contends the trial court abused its discretion by complying with *Harrell v. State*, 286 S.W.3d 315 (Tex. 2009), when it ordered the withdrawal of funds for court costs from Relator’s inmate trust account.

In *Harrell*, the Texas Supreme Court held that proceedings to recover court fees and costs assessed against inmates are civil in nature and not part of the underlying criminal case. *Id.* at 316. The court held further that due process does not require notice or a comprehensive civil garnishment proceeding prior to the withdrawal of funds from inmate trust accounts. *Id.* at 321. Instead, due process is satisfied if the inmate receives notice by copy of the withdrawal order, or other notification, and an opportunity to be heard after funds are withdrawn.¹ *Id.*

Relator admits that “[t]his case would seem to turn on *Harrell*,” but contends that the decision is “at odds with contemporary legal reasoning. . . .” But it is a tenet of our judicial system that courts of appeals, as well as all lower courts, are bound by decisions of the Texas Supreme Court. *Nat’l Cas. Co. v. Hampton*, 216 S.W.2d 614, 616 (Tex. Civ. App.–1948, writ ref’d n.r.e.). Therefore, both the trial court and this court are bound to follow *Harrell* until the Texas Supreme Court instructs us otherwise. See *In re K.M.S.*, 91 S.W.3d 331, 331 (Tex. 2002). Consequently, Relator has not shown that the trial court abused its discretion by complying with *Harrell*.

DISPOSITION

Because Relator has not shown an abuse of discretion by the trial court, he has failed to satisfy the first requirement for mandamus. Accordingly, we *deny* his petition for writ of mandamus.

JAMES T. WORTHEN
Chief Justice

Opinion delivered April 18, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

¹ The inmate must file a motion requesting an opportunity to be heard. See *Harrell*, 286 S.W.3d at 321. Relator’s mandamus petition does not include a copy of any such motion.