

NO. 12-12-00081-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE: §
WILLIE BILLINGTON, § *ORIGINAL PROCEEDING*
RELATOR §

***MEMORANDUM OPINION
PER CURIAM***

In this original proceeding, Relator Willie Billington seeks a writ of mandamus directing the trial court to rule on Relator’s “Motion For Compelling Orders.”

BACKGROUND

In November 2011, Relator filed several motions in the trial court, which were denied. Relator then sought copies of these motions from the district clerk, but was notified that he was not entitled to free copies. On January 25, 2012, Relator filed a “Motion For Compelling Orders” in which he alleged that, on his behalf, a friend delivered a money order to the office of the Smith County District Clerk in the amount required to purchase copies of the motions. He alleged further that despite this payment, the district clerk did not send the copies. Therefore, he requested an order from the trial court directing the district clerk to send the copies. According to Relator, the trial court has not ruled on the motion.

DISCUSSION

To obtain a writ of mandamus compelling the trial court to consider and rule on a motion, a relator must establish that the trial court (1) had a legal 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). Generally, a trial court has a

nondiscretionary duty to consider and rule on a motion within a reasonable time. *In re Thomas*, No. 12-05-00261-CV, 2005 WL 2155244, at *4 (Tex. App.–Tyler Sept. 7, 2005, orig. proceeding) (mem. op.). But a trial court cannot be expected to consider a motion not called to its attention. See *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.–Amarillo 2001, orig. proceeding). Merely filing a motion with the district clerk does not impute the clerk’s knowledge of the filing to the trial court. *Id.* at 228. Therefore, it is incumbent upon the relator to establish that the motion has been called to the trial court’s attention. See *id.* Relator has not made any such showing here. Consequently, we cannot conclude that he is entitled to mandamus relief. See *Chavez*, 62 S.W.3d at 228. Accordingly, Relator’s petition for writ of mandamus is *denied*.

Opinion delivered May 31, 2012.

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

(DO NOT PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

MAY 31, 2012

NO. 12-12-00081-CR

WILLIE BILLINGTON,
Relator
v.
HON. KERRY L. RUSSELL,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by **WILLIE BILLINGTON**, who is the relator in Cause No. 7-91-488, pending on the docket of the 7th Judicial District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on March 5, 2012, and the same having been duly considered, because it is the opinion of this Court that the writ of mandamus should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **DENIED**.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.