NO. 12-12-00133-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:	***§***	
WILLIE D. BEASLEY,	***§***	***ORIGINAL PROCEEDING***
RELATOR	***§***	

MEMORANDUM OPINION

Relator Willie D. Beasley seeks a writ of mandamus requiring the trial court to issue an order stating that no deadly weapon finding was included in his judgment of conviction for aggravated robbery. We deny the petition.

BACKGROUND

Relator was convicted of aggravated robbery and sentenced to imprisonment for forty years. The judgment of conviction, signed by the trial court on April 21, 1999, does not include a deadly weapon finding. To the contrary, in the space for "Findings on Use of Deadly Weapon," the typewritten notation "N/A" appears. Relator moved for a judgment nunc pro tunc in the trial court alleging that "[e]ven though the trial judge did not make such a finding of a deadly weapon in the judgment and sentence the officials at TDCJ [are] in fact treating [Relator] as if the trial court made a finding of a deadly weapon." In his prayer, Relator asked that the trial court issue an order "that there was no finding of a weapon made in this cause." The trial court denied Relator's motion, and Relator contends in this proceeding that mandamus should issue directing the trial court to issue the requested judgment nunc pro tunc.

AVAILABILITY OF MANDAMUS

In a criminal case, mandamus relief is authorized only if the relator establishes that (1) he has no other adequate legal remedy to redress his alleged harm and that (2) what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. ***State ex rel. Young v. Sixth Judicial Dist. Court of Appeals***, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). The second requirement is satisfied if the relator can show he has "'a clear right to the relief sought'—that is to say, 'when the facts and circumstances dictate but one rational decision' under unequivocal, well-settled (i.e., from extant statutory, constitutional, or case law sources), and clearly controlling legal principles." ***Id***. (quoting ***Buntion v. Harmon***, 827 S.W.2d 945, 947, 948 n.2 (Tex. Crim. App. 1992)). If the relator fails to satisfy either aspect of this two part test, relief should be denied. ***Id***. A judgment nunc pro tunc is the appropriate avenue to make a correction when the court's records do not mirror the judgment that was actually rendered. ***Alvarez v. State***, 605 S.W.2d 615, 617 (Tex. Crim. App. 1980).

In this proceeding, Relator readily admits that the 1999 judgment of conviction does not contain a clerical error. But he believes an order verifying the absence of a deadly weapon finding is necessary to persuade TDCJ officials that his parole eligibility date has been miscalculated. Thus, the order Relator seeks is not, in fact, a judgment nunc pro tunc. And he cites no authority supporting his argument that the trial court has a ministerial duty to issue the order he requests. Consequently, Relator has not shown that issuance of the order he seeks is a ministerial act. *See* ***Young***, 236 S.W.3d at 210.

DISPOSITION

Because Relator has not shown that the act he seeks to compel is ministerial, he has failed to satisfy one of the requirements for mandamus. *See* ***id***. Therefore, he cannot show that he entitled to mandamus relief. Accordingly, Relator's petition for writ of mandamus is ***denied***.

BRIAN HOYLE
Justice

Opinion delivered May 23, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)