

**NOS. 12-12-00189-CR
12-12-00190-CR**

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

IN RE: §
KEVIN JAMESON CARPENTER, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION

In these original mandamus proceedings, Relator Kevin Jameson Carpenter requests an order directing the trial court to sign a second judgment nunc pro tunc for additional jail time credit in each trial court cause number. We deny the petition.

BACKGROUND

Relator was placed on deferred adjudication probation in trial court cause numbers 114-80380-99 and 114-80386-99 on November 15, 1999. His probation in both cause numbers was revoked on July 28, 2004, and the judgments recorded 343 days of presentence jail time credit in each case. Relator alleges that the trial court signed a judgment nunc pro tunc that modified Relator's presentence jail time credits to 537 days. However, he has not provided a copy of his first motion for nunc pro tunc or a copy of the trial court's first judgment nunc pro tunc with his petition.

Relator alleges in these proceedings that he is entitled to a second judgment nunc pro tunc granting him an additional 1,065 days of presentence jail time credit. He contends this is the number of days between November 15, 1999, and October 15, 2002, during which he was imprisoned for a separate offense. Relator alleges that his imprisonment was not a condition of his deferred adjudication probation, that his probation was not suspended during his

imprisonment, and that his probation was to “run concurrent with any other pending sentence.” As a result, Relator argues that he is entitled to jail time credit for his imprisonment on a separate offense because he was on deferred adjudication probation for the current offenses. He asserts further that he has filed a motion requesting this second judgment nunc pro tunc in each cause number, but the trial court has failed to rule on his motions.

PREREQUISITES TO MANDAMUS

To obtain mandamus relief for a trial court’s failure to rule on a motion, a relator must establish that (1) the motion was properly filed and has been pending for a reasonable time, (2) the relator requested a ruling on the motion, and (3) the trial court refused to rule. *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding). The mere filing of a motion with a trial court does not equate to a request that the trial court rule on the motion. *Id.* A relator must show that the trial court received, was aware of, and was asked to rule on the motion. *In re Riffe*, No. 03-12-00355-CV, 2012 WL 2160561, at *1 (Tex. App.—Austin June 12, 2012, orig. proceeding) (mem. op., not designated for publication).

A party seeking mandamus relief must generally bring forward all that is necessary to establish the claim for relief. *In re Pena*, 104 S.W.3d 719, 719 (Tex. App.—Tyler 2003, orig. proceeding). Therefore, it is Relator’s burden to provide this court with a sufficient record to establish his right to mandamus relief. *See id.*

AVAILABILITY OF MANDAMUS

The trial court is required to grant a defendant presentence jail time credit when the sentence is pronounced. TEX. CRIM. PROC. ANN. art. 42.03, § 2(a) (West 2011). Presentence time credit claims typically must be raised by a motion for judgment nunc pro tunc filed with the clerk of the convicting trial court. *Ex parte Florence*, 319 S.W.3d 695, 696 (Tex. Crim. App. 2010). If a defendant has been denied presentence jail time credit, the preferred practice is for the trial court to enter a nunc pro tunc order authorizing credit for the appropriate time. *See Ex parte Forooghi*, 185 S.W.3d 498, 499 (Tex. Crim. App. 2006) (Johnson, J., concurring); *Ex parte Ybarra*, 149 S.W.3d 147, 148-49 (Tex. Crim. App. 2004). If the trial court denies the motion for judgment nunc pro tunc or fails to respond, relief may be sought by filing a petition

for writ of mandamus in the appropriate court of appeals. See *Florence*, 319 S.W.3d at 696; *Ybarra*, 149 S.W.3d at 149.

Here, Relator alleges that he filed his second motion for judgment nunc pro tunc, but there is no file mark on the copy that is included in the record. See TEX. R. APP. P. 52.7(a)(1) (requiring certified or sworn copy of every document material to relator's claim for relief and filed in any underlying proceeding). Consequently, we cannot determine whether the motion was properly filed. Even if we assume Relator's motion was properly filed, the record does not show that Relator requested the trial court to rule on the motion, and that, after a reasonable amount of time, the trial court failed to rule. Furthermore, the record does not include any documentation memorializing Relator's placement on deferred adjudication probation and containing the conditions of his probation. Nor does the record include any documentation verifying that he was imprisoned on the dates he alleges. Therefore, we cannot conclude from the record before us that Relator is entitled to mandamus relief.

Relator's petition for writ of mandamus is *denied*.

JAMES T. WORTHEN
Chief Justice

Opinion delivered July 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

JULY 31, 2012

NOS. 12-12-00189-CR
12-12-00190-CR

KEVIN JAMESON CARPENTER,
Relator
v.
HON. CHRISTI J. KENNEDY,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petitions for writ of mandamus filed by **KEVIN JAMESON CARPENTER**, who is the relator in Cause Nos. 114-80380-99 and 114-80386-99, pending on the docket of the 114th Judicial District Court of Smith County, Texas. Said petitions for writ of mandamus having been filed herein on May 24, 2012, and the same having been duly considered, because it is the opinion of this Court that these writs of mandamus should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petitions for writ of mandamus be, and the same is, hereby **DENIED**.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.