

**NO. 12-12-00203-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

***IN RE:***

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***MICHAEL A. KENNEDY,***

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***ORIGINAL PROCEEDING***

***RELATOR***

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***MEMORANDUM OPINION***

Relator Michael A. Kennedy, appearing pro se, requests that the trial court award him attorney's fees for representing himself during his resentencing hearing in trial court cause number 29326. In language that we construe as a motion, Relator also requests attorney's fees from this court for various appellate proceedings in which he either represented himself or was represented by an attorney whom he did not want. He implicitly argues that the trial court has denied his request for attorney's fees for the resentencing hearing and seeks a writ of mandamus requiring the trial court to award the fees.

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). Relator relies upon Texas Code of Criminal Procedure Articles 26.04 and 26.05 as authority for his argument that he is entitled to attorney's fees. *See* TEX. CODE CRIM. PROC. ANN. arts. 26.04, 26.05 (West Supp. 2011). However, his reliance on those articles is misplaced.

Article 26.04 requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt and publish written countywide procedures for appointing counsel to represent indigent defendants in criminal cases. *Id.* art. 26.04(a) (West Supp. 2011). These procedures govern the appointment of counsel for an indigent defendant in

the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. *Id.* Article 26.04 specifically provides that a court “shall appoint an *attorney.*” *Id.* (emphasis added).

Article 26.05 pertains to the compensation of attorneys who are appointed to defend indigent defendants pursuant to Article 26.04. *Id.* art. 26.05(a) (West Supp. 2011). Appointed attorneys, except those specifically excluded, “shall be paid a reasonable attorney’s fee for performing the [services listed], based on the time and labor required, the complexity of the case, and the experience and ability of appointed counsel. . . .” *Id.* The listed services encompass those related to trial as well as to the prosecution of an appeal. *See id.*

Indigent defendants who choose to represent themselves are not “appointed” under Article 26.04, nor are they included in the category of persons who are entitled to an award of “attorney’s fees” under Article 26.05. *See generally id.* arts. 26.04, 26.05. Thus, Relator has not shown that the trial court had a ministerial duty to award him attorney’s fees for representing himself.

This court is not assigned a role under Articles 26.04 and 26.05 in the appointment or the compensation of appointed appellate counsel. *See id.* art. 26.04(b)(1) (West Supp. 2011) (providing that procedures adopted pursuant to Article 26.04(a) shall authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges’ designee, to appoint counsel for indigent defendants in the county); art. 26.05(c), (f) (West 2011) (payments to be made according to a fee schedule adopted by the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county and sent to the commissioners court of the county; approved amounts shall be paid by commissioners court from general fund of county in which prosecution was instituted or habeas corpus hearing held). But even if Relator’s request was properly filed in this court, he would not be entitled to an award of appellate fees because he is not an appointed attorney. *See id.* arts. 26.04, 26.05.

### CONCLUSION

Relator has not shown that the trial court had a ministerial duty to award him attorney’s fees for representing himself at his resentencing hearing in trial court cause number 29326. Therefore, he has failed to satisfy one of the prerequisites to mandamus relief. Accordingly, his

petition for writ of mandamus is *denied*. Additionally, for the reasons stated above, Relator's motion for appellate attorney's fees is *overruled*. All other pending motions are *overruled as moot*.

**BRIAN HOYLE**  
Justice

Opinion delivered June 20, 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**

**JUNE 20, 2012**

**NO. 12-12-00203-CR**

**MICHAEL A. KENNEDY,**  
Relator  
v.  
**HON. MARK A. CALHOON,**  
Respondent

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**ORIGINAL PROCEEDING**

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ON THIS DAY came to be heard the petition for writ of mandamus filed by **MICHAEL KENNEDY**, who is the relator in Cause No. 29326, pending on the docket of the 3rd Judicial District Court of Anderson County, Texas. Said petition for writ of mandamus having been filed herein on June 7, 2012, and the same having been duly considered, because it is the opinion of this Court that a 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**. Relator's motion for appellate attorney's fees is **OVERRULED**. All other pending motions are **OVERRULED AS MOOT**.

Brian Hoyle, Justice.  
*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*