

NO. 12-13-00009-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:

§

JODY FORD MCCREARY,

§

ORIGINAL PROCEEDING

RELATOR

§

***MEMORANDUM OPINION
PER CURIAM***

Relator Jody Ford McCreary alleges that he was sentenced in absentia in trial court cause number 007-1110-10 and cannot appeal his conviction to this court until sentence is imposed in his presence. Accordingly, he requests a writ of mandamus directing the trial court to impose sentence in his presence in accordance with Texas Code of Criminal Procedure Article 42.03, Section (a).

Relator calls our attention to the trial court's docket sheet as support for his contention that he was sentenced in absentia. He specifically alleges that the docket sheet does not show that (1) the court reporter appeared, (2) counsel for the State appeared, (3) the defendant appeared with counsel, and (4) the trial court pronounced sentence. Although the copy included in the record is difficult to read, we have determined that it contains a number of stamped notations dated January 11, 2011, including the following:

(1) "State and Defendant announced ready and that Defendant [desired] to plead guilty to the Court and waive Jury Trial as to Guilt and Punishment";

(2) "Defendant fully admonished of the consequences of such a plea and advised of the range of punishment attached to the offense charged, but persisted in pleading guilty";

(3) "Defendant pleaded guilty";

(4) "Plea of guilty accepted. Evidence presented. Based on evidence, Defendant found GUILTY as charged in indictment and Court's findings made and ordered filed";

- (5) “Pre-Sentence Investigation and Report . . . waived in writing by Defendant”;
- (6) “Punishment assessed at 12 years confinement in Texas Department of Corrections”;

and

- (7) “Defendant sentenced.”

In a criminal case, a relator is entitled to mandamus relief only if he establishes (1) that he has no adequate remedy at law, and (2) that what he seeks to compel is a ministerial act. *In re State ex rel. Weeks*, 391 S.W.3d 117, 121-22 (Tex. Crim. App. 2013). The ministerial act requirement is satisfied if the relator can show a clear right to the relief sought. *Id.* at 122. Based upon the foregoing notations, we cannot conclude that Relator has established a clear right to mandamus relief. Relator’s petition for writ of mandamus is *denied*.

Opinion delivered April 24, 2013.

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(DO NOT PUBLISH)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**

APRIL 24, 2013

NO. 12-13-00009-CR

JODY FORD MCCREARY,

Relator

v.

HON. KERRY RUSSELL,

Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by **JODY FORD MCCREARY**, who is the relator in Cause No.007-1110-10, 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 January 8, 2013, 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**.

By *per curiam* opinion.

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