

NO. 12-22-00100-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
BRANDON EARL CROCKER, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

Brandon Earl Crocker, acting pro se, filed this original proceeding to challenge Respondent’s failure to rule on five motions.¹ He states that he filed (1) a second motion to reform judgment on February 11, 2021, (2) a motion for a free record on May 17, 2021, (3) a motion for appointment of counsel on May 27, 2021, (4) a motion to set evidentiary hearing and issue transport order on May 27, 2021, and (5) a motion to compel attorney to produce client file on August 23, 2021.

“If a party properly files a motion with the trial court in a criminal case, the court has a ministerial duty to rule on the motion within a reasonable time after the motion has been submitted to the court for a ruling or after the party has requested a ruling.” *In re Gomez*, 602 S.W.3d 71, 73 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding). To obtain a writ of mandamus in this context, the relator must show 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). 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). It is incumbent upon the relator to establish that the motion has been called to the trial court’s attention. *See id.*

¹ Respondent is the Honorable Jack Skeen, Jr., Judge of the 241st District Court in Smith County, Texas. The State of Texas is the Real Party in Interest.

Relator has not shown that his motions were brought to Respondent's attention. Some of Relator's motions are file stamped. But showing a motion was filed with the clerk does not prove the motion was brought to the trial court's attention or was presented to the trial court with a request for a ruling. See *In re Blakeney*, 254 S.W.3d 659, 662 (Tex. App.—Texarkana 2008, orig. proceeding). Nor is a relator's statement that a document was properly filed with the clerk a sufficient basis from which to reasonably infer that the trial court had notice of that document and the need to act on it. See *id*; see also *Chavez*, 62 S.W.3d at 228 (clerk's knowledge not imputed to trial court). Relator's appendix contains one letter addressed to Respondent and file-marked August 26, 2021, in which he requested rulings on his motions and copies of those rulings. But the record does not demonstrate that the letter was actually received by Respondent. See *In re Schlittler*, No. 12-21-00141-CR, 2021 WL 4202727, at *2 (Tex. App.—Tyler Sept. 15, 2021, orig. proceeding) (mem. op., not designated for publication) (per curiam); see also *In re Smith*, No. 12-19-00337-CR, 2019 WL 5956674, at *1 (Tex. App.—Tyler Nov. 13, 2019, orig. proceeding) (mem. op., not designated for publication) (per curiam). Nor does Relator's petition contain evidence, such as a docket sheet, demonstrating that the trial court has not ruled on his motions. See *Schlittler*, 2021 WL 4202727, at *2; see also *Smith*, 2019 WL 5956674, at *1.

Under these circumstances, Relator has not established his entitlement to mandamus relief. See *In re Wheeler*, No. 12-18-00127-CR, 2018 WL 2440464, at *1-2 (Tex. App.—Tyler May 31, 2018, orig. proceeding) (mem. op., not designated for publication) (denying mandamus relief when relator failed to show that he called motion for DNA testing to respondent's attention). We *deny* Relator's petition for writ of mandamus.

Opinion delivered May 11, 2022.

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

(DO NOT PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

MAY 11, 2022

NO. 12-22-00100-CR

BRANDON EARL CROCKER,
Relator
V.

HON. JACK SKEEN JR.,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Brandon Earl Crocker; who is the relator in appellate cause number 12-22-00100-CR and the defendant in trial court cause number 241-0571-20, formerly pending on the docket of the 241st Judicial District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on April 22, 2022, and the same having been duly considered, because it is the opinion of this Court that the writ 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., Hoyle, J. and Neeley, J.