

**NO. 12-22-00175-CR**  
**IN THE COURT OF APPEALS**  
**TWELFTH COURT OF APPEALS DISTRICT**  
**TYLER, TEXAS**

*IN RE:* §  
*MICHAEL VINCENT MOORE,* § *ORIGINAL PROCEEDING*  
*RELATOR* §

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***MEMORANDUM OPINION***  
***PER CURIAM***

Michael Vincent Moore, acting pro se, seeks a writ of mandamus compelling Respondent to transmit his motion for appointment of counsel pursuant to Chapter 64 of the code of criminal procedure, which addresses motions for forensic DNA testing, to this Court.<sup>1</sup>

Relator was convicted of capital murder and sentenced to life imprisonment. This Court affirmed his conviction in 2016. *See Moore v. State*, No. 12-15-00137-CR, 2016 WL 1730747 (Tex. App.—Tyler Apr. 29, 2016, pet. ref'd) (mem. op., not designated for publication). On April 12, 2017, the Texas Court of Criminal Appeals denied Relator's request for habeas relief without a written order. *See Ex parte Moore*, WR-86,382-01 (Tex. Crim. App. Apr. 12, 2017). According to Relator, he filed a second motion for appointment of counsel pursuant to Chapter 64 of the code of criminal procedure on December 18, 2020 and never received a response.<sup>2</sup> He complains that he has yet to receive a response and asks that we order Respondent to transmit his motion to this Court.

However, it is the *convicting court* that is tasked with appointing counsel for purposes of Chapter 64. *See* TEX. CRIM. PROC. ANN. art. 64.01(c) (West 2018) (“convicting court shall

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<sup>1</sup> Respondent is the Honorable Chris B. Martin, Judge of the 294th District Court in Van Zandt County, Texas. The State of Texas is the Real Party in Interest.

<sup>2</sup> Counsel was previously appointed to represent Relator in filing a Chapter 64 writ, but Relator contends that counsel abandoned that representation.

appoint counsel for the convicted person if the person informs the court that the person wishes to submit a motion under this chapter, the court finds reasonable grounds for a motion to be filed, and the court determines that the person is indigent”). And to the extent Relator’s petition can be construed as a complaint that Respondent has not ruled on his motion, even if the convicting court determines that a convicted person is indigent, the court is not required to appoint counsel if it finds there were no reasonable grounds for the motion to be filed—a finding that an appellate court would review for abuse of discretion. *In re Ludwig*, 162 S.W.3d 454, 455 (Tex. App.—Waco 2005, orig. proceeding). Thus, the appointment of counsel under Chapter 64 involves a discretionary decision and is not a purely ministerial act. *Id.*; see also *In re Gilmer*, No. 12-20-00063-CR, 2020 WL 975365, at \*1 (Tex. App.—Tyler Feb. 28, 2020, orig. proceeding) (mem. op., not designated for publication) (per curiam); *In re Weisinger*, No. 12-13-00205-CR, 2014 WL 5390660, at \*4 (Tex. App.—Tyler Oct. 22, 2014, orig. proceeding) (mem. op., not designated for publication).

Because the act Relator seeks to compel is not ministerial, he is not entitled to mandamus relief. See *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding); see also *Gilmer*, 2020 WL 975365, at \*1-2 (denying mandamus petition that sought order directing trial court to rule on motion for appointment of counsel pursuant to Chapter 64); *Weisinger*, 2014 WL 5390660, at \*4 (denying mandamus petition that sought order directing trial court to appoint counsel to assist in preparing motion for forensic DNA testing); *Ludwig*, 162 S.W.3d at 455 (denying mandamus petition that requested order compelling trial court to appoint attorney to represent him in Chapter 64 proceeding). We *deny* the petition for writ of mandamus.

Opinion delivered July 29, 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**

**JULY 29, 2022**

**NO. 12-22-00175-CR**

**MICHAEL VINCENT MOORE,**  
Relator  
V.

**HON. CHRIS B. MARTIN,**  
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 Vincent Moore; who is the relator in appellate cause number 12-22-00175-CR and the defendant in trial court cause number CR13-00337(A), formerly pending on the docket of the 294th Judicial District Court of Van Zandt County, Texas. Said petition for writ of mandamus having been filed herein on June 24, 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.*