

FOURTEENTH COURT OF APPEALS OF TEXAS

In re Deandre Dynell Deboest

No. 14-22-00149-CR · No. 14-22-00149-CR · Decided March 22, 2022

SUMMARY

The Fourteenth Court of Appeals of Texas denied Deandre Dynell Deboest’s petition for a writ of mandamus. The court held that Deboest failed to provide a sufficient record showing that relevant motions had been filed and brought to the trial judge’s attention, and further noted that his pro se petition presented nothing for review because he was represented by counsel.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Chief Justice Christopher; Justice Zimmerer; Justice Wilson
JURISDICTION	Texas
DECIDED	March 22, 2022
DOCKET	14-22-00149-CR
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding in which the relator sought a writ of mandamus compelling the presiding judge of the 262nd District Court of Harris County to dismiss the underlying criminal case.
STANDARD OF REVIEW	Mandamus relief requires the relator to show both the absence of an adequate remedy at law and a clear entitlement to relief by compelling a ministerial, rather than discretionary, act.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; designated Do Not Publish under Tex. R. App. P. 47.2(b).
PARTIES	Deandre Dynell Deboest, Relator

TOPICS

- appellate procedure
- criminal procedure
- speedy trial
- right to counsel

PRACTICE AREAS

- Texas appellate procedure
- criminal procedure
- mandamus

QUESTIONS PRESENTED

1. Whether Deboest established entitlement to mandamus relief by showing that a motion to dismiss or set aside the indictment had been filed, brought to the trial judge's attention, and left unresolved for an unreasonable period.
2. Whether Deboest's pro se mandamus petition could be considered while he was represented by counsel in the underlying criminal case.

HOLDINGS

1. A relator seeking mandamus to compel a trial court to rule must provide a sufficient record showing that the motion was filed, brought to the respondent judge's attention, and not ruled on within a reasonable time. Deboest failed to make that showing, so he was not entitled to mandamus relief.
2. A criminal defendant represented by counsel is not entitled to hybrid representation; therefore, Deboest's pro se mandamus petition presented nothing for review.

KEY QUOTATIONS

“Merely filing a motion with a court clerk does not show that the motion was brought to the trial court’s attention for a ruling because the clerk’s knowledge is not imputed to the trial court.” (2)

“A defendant in a criminal law matter is not entitled to hybrid representation.” (3)

FACTUAL BACKGROUND

Deboest was the defendant in a criminal case pending in the 262nd District Court of Harris County. He alleged that a police officer falsified an offense report and that the district attorney improperly advanced the case to the grand jury to avoid consequences associated with the approaching 180-day period. Deboest sought dismissal of the case, but he did not provide a mandamus record demonstrating that he had filed the relevant motions or brought them to the trial judge's attention for ruling. The petition indicated that he was represented by counsel.

PROCEDURAL HISTORY

Deboest filed a petition for writ of mandamus in the Fourteenth Court of Appeals on March 7, 2022. He sought to compel the trial judge to dismiss the criminal case based on alleged police report falsification, prosecutorial misconduct, and denial of a speedy trial. The appellate court denied mandamus relief because Deboest did not provide a sufficient record showing that a relevant motion had been filed, brought to the trial judge's attention, and left unresolved, and because his pro se petition constituted impermissible hybrid representation while he was represented by counsel.

DISPOSITION

writ_denied

CASES CITED

- In re Powell, 516 S.W.3d 488, 494–95 (Tex. Crim. App. 2017) (orig. proceeding)

- In re Henry, 525 S.W.3d 381, 382 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding)
- In re Gomez, 602 S.W.3d 71, 73–74 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding)
- In re Ramos, 598 S.W.3d 472, 473 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding)
- Jenkins v. State, 592 S.W.3d 894, 902 n.47 (Tex. Crim. App. 2018)
- Patrick v. State, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995)
- Turner v. State, 805 S.W.2d 423, 425 n.1 (Tex. Crim. App. 1991)

OPINION

PER CURIAM.

Petition for Writ of Mandamus Denied and Memorandum Opinion filed March 22, 2022. In The Fourteenth Court of Appeals NO. 14-22-00149-CR IN RE DEANDRE DYNELL DEBOEST, Relator ORIGINAL PROCEEDING WRIT OF MANDAMUS 262nd District Court Harris County, Texas Trial Court Cause No. 1737576 MEMORANDUM OPINION On March 7, 2022, relator Deandre Dynell Deboest filed a petition for writ of mandamus in this Court.

See Tex. Gov’t Code Ann. § 22.221; see also Tex. R. App. P. 52. In the petition, relator asks this Court to compel the Honorable Lori Chambers Gray, presiding judge of the 262nd District Court of Harris County, to “to dismiss this case, because the police officer tampered with a government record by falsifying an offense report related to my arrest, and the District Attorney helped charge report to conceal his conduct and rush it to the grand jury, because it was almost the 180th day, and they wanted to avoid him being fired and them sued for false arrest....” To be entitled to mandamus relief, the relator must show that (1) he has no adequate remedy at law to redress his alleged harm, and (2) what he seeks to compel is a ministerial act, not a discretionary act.

In re Powell, 516 S.W.3d 488, 494–95 (Tex. Crim. App. 2017) (orig. proceeding). A trial court has a ministerial duty to consider and rule on motions properly filed and pending before it, and mandamus may issue to compel the trial court to act.

In re Henry, 525 S.W.3d 381, 382 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding). For relator to be entitled to mandamus relief, the record must show (1) the motion was filed and brought to the attention of the respondent-judge for a ruling, and (2) the respondent-judge has not ruled on the motion within a reasonable time after the motion was submitted to the court for a ruling or after the party requested a ruling.

In re Gomez, 602 S.W.3d 71, 73 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding). As the party seeking mandamus relief, relator has the burden of providing this court with a sufficient record to establish his right to mandamus relief. *Id.* at 73–74; Henry, 525 S.W.3d at 382; see also Tex. R. App. P. 52.7(a)(1) (relator must file with the mandamus petition “a certified or sworn copy of every document that is material to the relator’s claim for relief and that was filed in any underlying proceeding”).

To establish that the motion was filed, the relator must provide either a file-stamped copy of the motion or other proof that the motion in fact was filed and is pending before the trial court. *Gomez*, 602 S.W.3d at 74. Merely filing a motion with a court clerk does not show that the motion was brought to the trial court's attention for a ruling because the clerk's knowledge is not imputed to the trial court.

In *re Ramos*, 598 S.W.3d 472, 473 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding). Relator has not provided this court with a mandamus record to demonstrate that he filed either a motion to set aside the indictment or a motion to dismiss for failure to provide a speedy trial was filed in the trial court. Similarly, there is no record that relator has brought a pending motion to the attention of the respondent-judge for a ruling.

Mere filing is insufficient because the clerk's knowledge is not imputed to the trial judge. See *Ramos*, 598 S.W.3d at 473. The respondent-judge is not required to consider a motion that has not been called to the trial court's attention by proper means. See *Henry*, 525 S.W.3d at 382. Relator has not made the requisite showing.

Moreover, as set forth in relator's petition for writ of mandamus, relator is represented by counsel. A defendant in a criminal law matter is not entitled to hybrid representation. *Jenkins v. State*, 592 S.W.3d 894, 902 n.47 (Tex. Crim. App. 2018).

In the absence of a right to hybrid representation, relator's pro se petition for writ of mandamus presents nothing for this court's review. See *Patrick v. State*, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995); *Turner v. State*, 805 S.W.2d 423, 425 n.1 (Tex. Crim. App. 1991). Relator has not established that he is entitled to mandamus relief.

Accordingly, we deny relator's petition for writ of mandamus. PER CURIAM Panel consists of Chief Justice Christopher and Justices Zimmerer and Wilson. Do Not Publish — Tex. R. App. P. 47.2(b). 3