

Conditionally and Opinion Filed October 15, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00369-CV

IN RE MICHAEL DWAIN WILLIAMS, Relator

**Original Proceeding from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F15-00248**

MEMORANDUM OPINION

Before Justices Myers, Molberg, and Evans
Opinion by Justice Molberg

Before the Court is relator's March 17, 2020 petition for writ of mandamus, in which relator complains about the trial court's failure to rule on his third motion for judgment nunc pro tunc filed in November 2019. We requested responses from respondent, the Honorable Gracie Lewis, and from the real party in interest, the State of Texas. Respondent filed no response. The State responded and urges us to deny relator's petition based on the merits of relator's underlying motion. While relator and the State disagree about those merits, it is undisputed that the trial court has not yet ruled on relator's motion. We conditionally grant relief without commenting on the merits of relator's motion.

BACKGROUND

We draw this information from the certified and sworn materials included with relator's petition filed on March 17, 2020. *See* TEX. R. APP. P. 52.3(k).¹

Relator is an inmate serving an eight-year sentence for felony driving while intoxicated. The sentence resulted from a plea agreement providing that the sentence would run concurrently "with all other cases, if any." The trial court's judgment stated, "This sentence shall run concurrently" and awarded relator time credit from October 1, 2014, the date of his arrest, to June 25, 2015, the date of sentencing and the date of the judgment.

At the time of his DWI arrest, relator was on parole for an aggravated assault conviction. According to the record before us, relator's sentence in that case was discharged on July 8, 2015.

Relator filed his third motion for judgment nunc pro tunc in November 2019. After sixty days with no consideration of the motion, relator filed a request for ruling on that motion on January 24, 2020. Relator maintains, and the State does not dispute, that by the time relator filed his petition for writ of mandamus in March 2020, no consideration had yet been given to his motion, which had been pending for more than one hundred twenty days.

¹ These materials include but are not limited to relator's third motion for judgment nunc pro tunc, the trial court's judgment, relator's plea agreement, relator's affidavit, and a January 24, 2020 letter requesting a ruling on his third motion for judgment nunc pro tunc.

After relator filed his petition for writ of mandamus, we issued an order on April 3, 2020, requesting that the real party interest and respondent file their responses, if any, on or before April 21, 2020.

On April 17, 2020, the State of Texas, the real party in interest, filed a response addressing the merits of relator's motion for judgment nunc pro tunc and urging us to deny relator's petition. The State included with its response an appendix containing additional materials from the proceedings below, including relator's first and second motions for judgment nunc pro tunc (filed September 13, 2018, and November 21, 2018, respectively), as well as materials reflecting the trial court's activity on those motions.

The State's appendix reflects that after relator's first motion for judgment nunc pro tunc, the trial court issued a letter to relator on September 18, 2018, explaining that the judgment already gave him the time credit he was entitled to, and thus there was no need for a nunc pro tunc judgment. On September 19, 2018, the trial court issued an unsigned memorandum with a number of check boxes with possible responses, and an "X" placed by the box marked "Other" and words stating, "Please see the front page of your judgment for this case. Notice that your cases are to run concurrent with this sentence." Below that, on a set of additional lines, the unsigned memorandum stated, "Your document was presented to the Judge of this court. No ruling was made." The State's appendix also reflects that after relator's

second motion for nunc pro tunc judgment on November 21, 2018, the trial court responded that same day with another memorandum to relator.²

On November 11, 2019, relator submitted his third motion for nunc pro tunc judgment that is the subject of this proceeding.³ Relator maintains the trial court has not ruled on this motion, and the State has not indicated otherwise.

In his petition and response in this proceeding, relator claims he seeks a judgment nunc pro tunc “so that the concurrent jail time credits agreed to and awarded [per his plea agreement] may be recognized by prison officials and executed” according to article 42.08 of the Texas Code of Criminal Procedure.

ANALYSIS

In a criminal case, mandamus relief is appropriate only when a relator establishes 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 or judicial decision. *Bowen v. Carnes*, 343 S.W.3d 805, 810 (Tex. Crim. App. 2011); *In re Smith*, No. 05-17-00635-CV, 2017 WL 2665284, *1 (Tex. App.—Dallas June 21, 2017, orig. proceeding) (mem. op., not designated for publication).

² The memorandum contained four marked boxes and related statements. With the first marked box, the memorandum stated, “Back time credit has been reviewed and is correct according to Dallas County Jail Records.” With the second, the memorandum stated, “If you feel you are entitled to credit for any time served in any jail facility other than Dallas County, you must contact that facility for written verification and forward it to this court for consideration.” With the third, the memorandum stated, “Back time credit from date of sentence to date of transfer to State Jail or Penitentiary is calculated and credited by the Texas Department of Criminal Justice.” Finally, with the fourth marked box, the memorandum stated, “All cases are run concurrent unless otherwise specified.”

³ Relator’s cover letter to the district clerk regarding his third motion was dated November 11, 2019. The district clerk filed the third motion as requested and file-stamped it on November 19, 2019.

A relator satisfies the ministerial-act component when he can show he has a clear right to the relief sought. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013). A trial court has a ministerial duty to rule upon a properly filed and timely presented motion but generally has no ministerial duty to rule a certain way on the motion. *State ex rel. Young v. Sixth Jud. Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007). To be properly filed and timely presented, a motion must be presented to a trial court at a time when the court has authority to act on the motion. *In re Smith*, 2017 WL 2665284, at *1. A trial court has a ministerial duty to correct a judgment to reflect the appropriate credit for time served, and if a motion for a nunc pro tunc order for back time credit is filed and the trial judge fails to respond within a reasonable time, relief may be sought by petition for writ of mandamus to our Court. *Id.* The circumstances of the case dictate whether the trial court has ruled within a reasonable time. *Id.* In addition, “[w]hen a trial court pronounces its judgment or declares the contents of its order, the act of committing the judgment or order to writing and signing it is a ministerial act.” *In re Pete*, No. 14-20-00456-CR, 2020 WL 4689272, at *1 (Tex. App.—Houston [14th Dist.] Aug. 13, 2020, no pet. h.).

Here, relator’s third motion for judgment nunc pro tunc has been on file for roughly eleven months. Relator requested a ruling on the motion in the trial court approximately nine months ago. Although an unsigned memorandum was sent to relator, it stated that no ruling has yet been made. Under these circumstances, the

trial court failed to fulfill its ministerial duty to rule on relator's motion within a reasonable time, and relator lacks an adequate appellate remedy.

We do not reach the merits of relator's pending motion, and we do not address his arguments regarding the trial court's alleged ministerial duty to grant the relief he requests. We leave the ruling on the merits of relator's motion to the trial court in the first instance. *See In re Ramos*, 598 S.W.3d 472, 474 (Tex. App.—Houston [14th Dist. 2020, orig. proceeding) (conditionally granting writ without regard to the merits of a pending motion for judgment nunc pro tunc and ordering the trial court to rule on the motion within twenty-one days after court's opinion).⁴

Accordingly, we conditionally grant relator's petition for writ of mandamus in part and order that the trial court make a written ruling on relator's third motion for judgment nunc pro tunc filed on November 19, 2019, within twenty-one days of the date of this opinion and to file with this court, within thirty days of the date of this opinion, a certified copy of its written ruling. A writ will issue only if the trial court fails to comply with this opinion and our order of this date.

⁴ We note that in *In re Ramos*, our sister court disagreed with our prior approach in *In re Guzman*, No. 05-16-01110-CV, 2017 WL 3393795, at *1–2 (Tex. App.—Dallas Aug. 8, 2017, orig. proceeding) (mem. op.), in which we denied mandamus relief on the grounds that the relief sought correction of a judicial error, not a clerical error. *Ramos*, 598 S.W.3d at 474. *Guzman* is distinguishable from the facts here, as in that case, Guzman sought to have two of three life sentences set aside based on a contention that the consecutive sentences were not authorized by law. Here, relator appears to seek a correction regarding the concurrent nature of his sentence, not the imposition of the sentence or a ruling regarding the legal authority for it. Thus, because of these distinctions, our analysis here is not inconsistent with our prior decision in *Guzman*, and *Ramos*'s disagreement with *Guzman* does not alter our analysis here.

All other relief is denied.

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/Ken Molberg/

KEN MOLBERG
JUSTICE