

**Petition for Writ of Mandamus Denied and Majority Memorandum Opinion
and Concurring Memorandum Opinion filed June 25, 2020.**



In The

Fourteenth Court of Appeals

NO. 14-20-00318-CR

IN RE BRENT AARON MARSHALL, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
10th District Court
Galveston County, Texas
Trial Court Cause No. 19CR2338**

MAJORITY MEMORANDUM OPINION

On April 23, 2020, relator Brent Aaron Marshall 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 Kerry L. Neves, presiding judge of the 10th District Court of Galveston County, to rule on an application for writ of habeas corpus, which relator alleges he filed with the trial court on October 3, 2019.

A criminal defendant is not entitled to hybrid representation. *See Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007); *Landers v. State*, 550 S.W.2d 272, 280 (Tex. Crim. App. 1977) (op. on reh’g). If a relator is represented by counsel in the trial court, this court may deny the relator’s pro se mandamus petition based solely on the absence of a right to hybrid representation. *See In re Flanigan*, 578 S.W.3d 634, 637 (Tex. App.—Houston [14th Dist.] 2019, orig. proceeding). Documents attached to relator’s petition reflect that relator is represented by counsel in the trial court. Because relator is not entitled to hybrid representation, relator is not entitled to this court’s consideration of his pro se petition for mandamus relief. *See In re Flanigan*, 578 S.W.3d at 637. Even so, relator has not shown his entitlement to mandamus relief.

To be entitled to mandamus relief, relator must establish that (1) he lacks an adequate remedy at law for obtaining the relief he seeks and (2) what relator seeks to compel involves a ministerial act rather than a discretionary act. *In re Powell*, 516 S.W.3d 488, 494–95 (Tex. Crim. App. 2017). If a party properly files a motion with a trial court, the trial 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 requested a ruling. *See In re Flanigan*, 578 S.W.3d at 635–36. Thereafter, if a trial court fails to rule, mandamus may issue to compel the trial court to act. *See id.* The relator shoulders the burden of providing this court with a sufficient record to establish the relator’s right to mandamus relief. *In re Ramos*, 598 S.W.3d 472, 473 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding); Tex. R. App. P. 52.7(a)(1) (relator must file with 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”). For mandamus relief to be granted, 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 Ramos*, 598 S.W.3d at 473. To show the motion was filed, the relator must furnish either a file-stamped copy of the motion or provide other proof that the motion, in fact, was filed and is pending before the trial court. *Id.* Because relator has not provided this court with a record showing that he has filed his alleged application for writ of habeas corpus and brought it to the attention of the respondent-judge for a ruling, relator is not entitled to mandamus relief.

For these reasons, we deny relator’s petition for writ of mandamus.

/s/ Kem Thompson Frost
 Chief Justice

Panel consists of Chief Justice Frost and Justices Jewell and Spain (Spain, J., concurring).

Do Not Publish — Tex. R. App. P. 47.2(b).