



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-86,973-04

IN RE ADAM REPOSA, Relator

**ON ORIGINAL APPLICATION FOR A WRIT OF MANDAMUS
IN CAUSE NO. C-1-CR-17-100018
FROM THE COUNTY COURT AT LAW NO. 5 FROM TRAVIS COUNTY
& CAUSE NO. 03-17-00667-CV FROM THE THIRD COURT OF APPEALS**

ALCALA, J., filed a dissenting opinion.

DISSENTING OPINION

Today, the Court denies relator leave to file his application for a writ of mandamus, but instead the proper resolution is dismissal of this application because relator's complaints have become moot. The record now shows that, around one month ago, after he filed the instant application, relator was released from confinement for the contempt judgment that he has repeatedly sought to challenge in this Court over the past several months. The State has filed a response in this case urging that relator's first claim in the instant application has become moot as a result of his release, and urging that his second claim does not present a

proper basis for mandamus relief. I agree in part with the State's arguments. Because I conclude that relator's request for mandamus relief has now become moot in light of his release from confinement, I would dismiss the instant application rather than deny leave to file. This Court's denial of leave to file suggests that it is rejecting relator's claims on their merits, which is improper given that his claims are moot. I, therefore, cannot join the Court's order.

Based on the information presented in the State's most recent pleading in this case, the record now shows that, on December 6, 2017, the parties filed an agreed motion in the contempt court in which they sought to eliminate the requirement that relator serve his six-month sentence day-for-day. In that agreed motion, the parties stated that "the portion of the judgment issued by Judge Davis that reads, 'and for respondent to serve this sentence day for day,' is voidable." The parties further stipulated that, "per the Code of Criminal Procedure, the award of time credit is at the discretion of the Sheriff of Travis County." Based on this, the parties agreed that the proper remedy was for relator's judgment to be reformed so that the condition requiring him to serve his sentence day-for-day would be deleted. The contempt-court judge signed an order removing the day-for-day condition from relator's judgment and, on December 13, relator was released from confinement based on his receipt of time credits.

I agree with the State's observation in its most recent pleading that, where it is impossible for this Court to grant effectual relief for any reason, a cause is moot. *See*

Chacon v. State, 745 S.W.2d 377, 378 (Tex. Crim. App. 1988). Here, with respect to relator's first complaint in the instant application pertaining to the lawfulness of the day-for-day sentencing requirement, that complaint has obviously become moot in light of the removal of that condition from the judgment. Relator's second complaint, in which he asserts that the court of appeals violated a clear ministerial duty by ordering the Williamson County court to refrain from taking any action on relator's habeas application that had been filed in that court, has also effectively become moot because the underlying habeas application can no longer have any purpose in light of relator's release from confinement. Under these circumstances in which relator is no longer confined, any further adjudication of the merits of his complaints in this case would appear to be wholly advisory. I, therefore, disagree with this Court's decision to deny leave to file at this juncture, when dismissal would be the only appropriate resolution.

Although he has ultimately obtained relief from what was apparently a voidable sentence through an agreed modification of the judgment, relator has done so without any meaningful involvement or intervention by this Court or any other court. As I have expressed in my prior opinions in this case, as the State's highest court for criminal matters, this Court should have become involved in this case months ago to address the substantive merits of relator's complaints when he originally sought habeas relief in this Court. In any event, in light of relator's release from confinement, I conclude that his instant complaints should be dismissed as moot. Because this Court instead denies leave to file rather than

dismissing relator's complaints as moot, I respectfully dissent.

Filed: January 10, 2018

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