



## In re Garcia

2008 | Cited 0 times | Court of Appeals of Texas | May 7, 2008

### MEMORANDUM OPINION

Sitting: Alma L. López, Chief Justice, Sandee Bryan Marion, Justice, Rebecca Simmons, Justice.

### PETITION FOR WRIT OF MANDAMUS DENIED WITHOUT PREJUDICE

Relator Ovidio Garcia, Jr. filed a petition for a writ of mandamus seeking to compel the Honorable Alex W. Gabert, presiding judge of the 229th Judicial District Court, Starr County, Texas, to rule on relator's motion for forensic DNA testing. In response, Judge Gabert filed copies of: (1) an order granting the State's motion for Judge Gabert's recusal; and (2) a request to the regional administrative judge asking for the assignment of a judge to hear relator's motion. We conclude that the newly-appointed judge must be given a reasonable opportunity to consider and rule on relator's motion and therefore deny relator's request for mandamus relief at this time. Accordingly, relator's petition for a writ of mandamus is denied without prejudice.

### PER CURIAM

### DO NOT PUBLISH

1. This proceeding arises out of Cause No. 91-CR-43, styled State of Texas v. Ovidio Garcia, Jr., filed in the 229th Judicial District Court, Starr County, Texas, the Honorable Alex W. Gabert presiding.

