



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00112-CR

IN RE PHILLIP LEO TORRES, JR., RELATOR

Original Proceeding

**Arising Out of Proceedings before the 100th District Court
In and For Hall County, Texas**

Trial Court No. 3616; Honorable Stuart Messer, Presiding

March 18, 2016

**MEMORANDUM OPINION
ON PETITION FOR WRIT OF MANDAMUS**

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Relator, Phillip Leo Torres, Jr., seeks a writ of mandamus to compel Judge Stuart Messer to rule on his writ of habeas corpus filed pursuant to article 11.072 of the Texas Code of Criminal Procedure.¹ For the reasons explained herein, we deny Relator's petition.

¹ Article 11.072, entitled "Procedure in Community Supervision Case," establishes the procedures

BACKGROUND

By his petition for writ of mandamus, Relator contends Judge Messer has failed to perform a ministerial duty, to-wit: sign an order ruling on his writ of habeas corpus relief which he contends he mailed to the District Clerk on or about September 16, 2015. Included with his petition is a copy of his writ of habeas corpus.² In his request for habeas corpus relief, he challenges his deferred adjudication community supervision of eight years for aggravated assault with a deadly weapon in trial court cause number 3616. He was later adjudicated guilty of the offense and now contends the prosecution alleged a second offense of aggravated assault against the same victim but on a different date in a “Stipulation of Evidence.”

Relator further asserts that the complaint and information in the underlying case are void thus bringing the validity of his deferred adjudication community supervision into question. Finally, Relator contends that both his trial counsel and appellate counsel were ineffective.

MANDAMUS STANDARD OF REVIEW

Mandamus relief is extraordinary. *In re Braswell*, 310 S.W.3d 165, 166 (Tex. App.—Amarillo 2010, orig. proceeding) (citing *In re Southwestern Bell Telephone Co., L.P.*, 235 S.W.3d 619, 623 (Tex. 2007) (orig. proceeding)). “Mandamus issues only to correct a clear abuse of discretion or the violation of a duty imposed by law when there

for an application for a writ of habeas corpus in a felony or misdemeanor case in which the applicant seeks relief from an order or judgment of conviction ordering community supervision. See TEX. CODE CRIM. PROC. ANN. art. 11.072 (West 2015).

² The copy provided bears no file stamp. It is a handwritten duplicate “signed on this 8th day of March 2016,” the same date as the petition for writ of mandamus. We assume Relator generated this document solely for the purpose of including it with the petition for writ of mandamus.

is no other adequate remedy by law.” *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding) (quoting *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (orig. proceeding)). To show entitlement to mandamus relief, a relator must satisfy three requirements: (1) a legal duty to perform; (2) a demand for performance; and (3) a refusal to act. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979).

ANALYSIS

Initially, we address Relator’s failure to provide this court with a sufficient record to determine whether he is entitled to mandamus relief. Even with a liberal construction, his petition does not satisfy most of the mandatory requirements of Rule 53.2 of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 52.3(b), (c), (d), (f), (g), (h). Most importantly, Relator has not included an appendix with certified or sworn copies of the documents that are the basis for his complaints. *Id.* at (k)(1)(A). Although we are not unsympathetic to the plight of an inmate’s *pro se* status, it does not exempt him from complying with rules of procedure. See *Pena v. McDowell*, 201 S.W.3d 665, 667 (Tex. 2006); *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978).

Furthermore, as a general rule, mandamus is not available to compel a trial court to perform an act if the action has not first been requested and then refused by the trial court. See *In re Perritt*, 992 S.W.2d 444, 446 (Tex. 1999) (orig. proceeding) (holding that a party’s right to mandamus relief generally requires a predicate request for action and a refusal of that request); *In re Carrington*, No. 07-12-00220-CV, 2012 Tex. App. LEXIS 8197, at *6 (Tex. App.—Amarillo Sept. 27, 2012, orig. proceeding). Here, Relator has merely averred that he mailed his application to the clerk. He has not

established that the application was ever made known to the trial judge or that a demand for performance has ever been made.

Consequently, Relator's request for mandamus relief is denied.

Per Curiam

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