



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00042-CV

IN RE: CARL HUNT

Original Mandamus Proceeding

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Carl Hunt filed a petition for writ of mandamus with this Court informing us that a jury sentenced him to ninety-nine years' imprisonment on an unknown date in an unknown cause number. The exact criminal offense for which he was convicted is unclear. Hunt does clarify that the State's indictment charged him with deadly conduct. He complains that the trial court erred when it entered a deadly weapon finding even though the State "did not request that the jury be required to answer a special issue as to whether [or] not Hunt, used or exhibit[ed] a deadly weapon beyond a reasonable doubt." In an attempt to correct any error, Hunt filed a petition for judgment nunc pro tunc, which was denied by the trial court on March 30, 2009. He seeks mandamus on the denial of this motion.

Mandamus is an extraordinary remedy that issues only to correct a clear abuse of discretion or violation of a duty imposed by law when no other adequate remedy by law is available. *State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984) (orig. proceeding). Due to the nature of this remedy, it is Hunt's burden to properly request and show entitlement to the mandamus relief. *See generally Johnson v. Fourth District Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (orig. proceeding); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) ("Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.").

An erroneous denial of a judgment nunc pro tunc can be corrected through a mandamus proceeding. *In re Bridges*, 28 S.W.3d 191, 195–96 (Tex. App.—Fort Worth 2000, orig. proceeding).

However, "[t]he purpose of a judgment nunc pro tunc is to correct a clerical error in the judgment after the court's plenary power has expired." *Jenkins v. Jenkins*, 16 S.W.3d 473, 482 (Tex. App.—El Paso 2000, no pet.); see *W. Tex. State Bank v. Gen. Res. Mgmt. Corp.*, 723 S.W.2d 304, 306 (Tex. App.—Austin 1987, writ ref'd n.r.e.). Hunt did not seek to correct any clerical error, but instead challenged the State's indictment and/or the trial court's affirmative deadly weapon finding when the issue was not submitted to the jury. See generally *Carl Hunt v. State*, 994 S.W.2d 206, 208–09 (Tex. App.—Texarkana 1999, pet. ref'd) (defendant charged with deadly conduct waived alleged error in indictment, which did not allege all the elements of the offense because he failed to object). This is an appealable matter. Mandamus will not issue when there is a clear and adequate remedy at law, such as a normal appeal. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding).

Further, Hunt had the obligation to provide us with evidence in support of his claim that he is entitled to mandamus relief. No portion of any clerk's record or reporter's record has been filed with this Court. The absence of a mandamus record prevents us from evaluating the circumstances of this case and, consequently, the merits of Hunt's complaints. See TEX. R. APP. P. 52.7; *Barnes*, 832 S.W.2d at 426.

We deny the petition for writ of mandamus.

Bailey C. Moseley
Justice

Date Submitted: April 27, 2009
Date Decided: April 28, 2009