



**NUMBER 13-10-00323-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**IN RE DAVID HERRERA BARRERA**

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**On Petition for Writ of Mandamus.**

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**MEMORANDUM OPINION**

**Before Justices Rodriguez, Benavides, and Vela  
Per Curiam Memorandum Opinion<sup>1</sup>**

Relator, David Herrera Barrera, pro se, filed a “Motion for Leave to File Petition for Writ of Mandamus” and a petition for writ of mandamus in the above cause on June 9, 2010.<sup>2</sup> We dismiss relator’s motion for leave to file the petition for writ of mandamus as moot because the Texas Rules of Appellate Procedure no longer require the relator to file a motion for leave to file an original proceeding. *See generally* TEX. R. APP. P. 52 & cmt.

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<sup>1</sup> See TEX. R. APP. P. 52.8(d) (“When granting relief, the court must hand down an opinion as in any other case.”); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

<sup>2</sup> This Court previously affirmed relator’s conviction for aggravated assault against a public servant. *See Barrera v. State*, No. 13-09-00221-CR, 2010 Tex. App. LEXIS 2957, at \*2 (Tex. App.–Corpus Christi Apr. 22, 2010, no pet.) (mem. op., not designated for publication).

We deny the petition for writ of mandamus as stated herein.

Mandamus relief may be granted if the relator shows that: (1) the act sought to be compelled is purely ministerial; and (2) there is no adequate remedy at law. See *Deleon v. Dist. Clerk*, 187 S.W.3d 473, 474 (Tex. Crim. App. 2006) (orig. proceeding). The relator must have a “clear right” to the relief sought and the merits of the relief sought must be “beyond dispute.” See *id.* “The requirement of a clear legal right necessitates that the law plainly describes the duty to be performed such that there is no room for the exercise of discretion.” See *id.*

It is the relator's burden to provide this Court with a sufficient petition and record to establish his right to mandamus relief. See *generally* TEX. R. APP. P. 52. Specifically, for instance, the relator must file an appendix with the petition for writ of mandamus, and the appendix must include, inter alia, a certified or sworn copy of any order complained of, or any other document showing the matter complained of. See *id.* 52.3(k). The relator must also file a record including 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,” and “a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or a statement that no testimony was adduced in connection with the matter complained.” See *id.* 52.7(a). Further, relator must file a certification with the petition for the petition for writ of mandamus stating that every factual statement in the petition is supported by competent evidence included in the appendix or record. See *id.* 52.3(j). Finally, the petition for writ of mandamus must contain a “clear and concise argument for the contentions made, with appropriate citations to authorities and to the appendix or record.” See *id.* 52.3(h).

In the instant case, relator has failed to meet these requirements and has thus failed to provide this Court with a petition and record sufficient to establish his right to mandamus relief. Accordingly, the petition for writ of mandamus is DENIED. See *id.* 52.8(a).

PER CURIAM

Do not publish. See TEX. R. APP. P. 47.2(b).

Delivered and filed the  
14th day of June, 2010.