



NUMBER 13-16-00434-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE ERWIN BURLEY

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Justices Rodriguez, Benavides, and Perkes
Memorandum Opinion Per Curiam¹

Relator, Erwin Burley, proceeding pro se, filed a petition for writ of mandamus in the above cause on August 1, 2016.² Although the petition is unclear, relator appears to

¹ See TEX. R. APP. P. 52.8(d) (“When denying relief, the court may hand down an opinion but is not required to do so.”); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

² Relator has previously appeared before this Court in other appellate causes. See *In re Burley*, No. 13-16-00073-CR, 2016 WL 415375, at *1 (Tex. App.—Corpus Christi Feb. 2, 2016 orig. proceeding) (per curiam mem. op., not designated for publication); *In re Burley*, No. 13-15-00253-CR, 2015 WL 3533762, at *1 (Tex. App.—Corpus Christi June 4, 2015, orig. proceeding) (per curiam mem. op., not designated for publication); *Burley v. State*, No. 13-11-00582-CR, 2012 WL 3792114, at *1 (Tex. App.—Corpus Christi Aug. 31, 2012, pet. ref'd) (mem. op., not designated for publication) (affirming relator’s conviction for the third-degree felony offense of possession of cocaine in a drug-free zone). Relator has further pursued mandamus relief in the Texas Court of Criminal Appeals on grounds that the trial court had properly failed to act on his application for writ of habeas corpus. See *In re Burley*, No. WR-63,010-03,

be seeking to compel the trial court to issue a ruling on relator's motion seeking access to "exculpatory evidence," to grant that motion, and to compel the district clerk to provide relator with the evidence.³

To be entitled to mandamus relief, relator must establish both that he has no adequate remedy at law to redress his alleged harm, and that what he seeks to compel is a ministerial act not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Ct. of App. at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007). If relator fails to meet both of these requirements, then the petition for writ of mandamus should be denied. *See id.*

It is the relator's burden to properly request and show entitlement to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); *see 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."). In addition to other requirements, the relator must include a statement of facts supported by citations to "competent evidence included in the appendix or record," must provide "a clear and concise argument for the contentions made, with appropriate citations to authorities and to the appendix or record," and must file an appendix and record sufficient to support the claim for mandamus relief. *See generally* TEX. R. APP. P. 52.3, 52.7; *see also Walker*, 827 S.W.2d at 837.

2015 WL 4644761, at *1 (Tex. Crim. App. Aug. 5, 2015) (order, not designated for publication). The court of criminal appeals denied mandamus relief in that case after requesting and receiving a response to the petition from the District Clerk of Nueces County.

³ This cause arises from trial court cause number 10-CR-2645-D(S-1) in the 105th District Court of Nueces County, Texas. The respondents in this original proceeding are the presiding judge of that court, the Honorable Jack Pulcher, and the District Clerk of Nueces County, Anne Lorentzen.

Relator has failed to meet his burden to obtain mandamus relief as against the judge of the trial court. There is nothing in the limited record before this Court to establish that relator's pleadings were presented to the respondent and the respondent refused to act. See *In re Dimas*, 88 S.W.3d 349, 351 (Tex. App.—San Antonio 2002, orig. proceeding). Relator has further failed to meet his burden to obtain mandamus relief as against the district clerk. This Court does not have mandamus jurisdiction over clerks unless it is shown that issuance of the writ is necessary to enforce our jurisdiction. See TEX. GOV'T CODE ANN. § 22.221(a), (b) (West, Westlaw through 2015 R.S.); *In re Smith*, 263 S.W.3d 93, 95 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding); *In re Washington*, 7 S.W.3d 181, 182 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding); *In re Coronado*, 980 S.W.2d 691, 692 (Tex. App.—San Antonio 1998, orig. proceeding). The limited record provided does not indicate that mandamus relief is necessary to enforce our jurisdiction.

The Court, having examined and fully considered the petition for writ of mandamus, is of the opinion that relator has not met his burden to obtain mandamus relief. *State ex rel. Young*, 236 S.W.3d at 210. Accordingly, the petition for writ of mandamus is DENIED in part as to the relief sought against the trial court and DISMISSED in part for want of jurisdiction as to the relief sought against the district clerk. See TEX. R. APP. P. 52.8(a).

PER CURIAM

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

Delivered and filed the
5th day of August, 2016.