



NUMBER 13-17-00511-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE JESSE RIOS

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Rodriguez, Benavides, and Longoria
Memorandum Opinion by Justice Benavides¹**

Relator Jesse Rios filed a pro se petition for writ of mandamus in the above cause on September 18, 2017 seeking to compel the district clerk to file relator's motion for nunc pro tunc judgment and to compel the trial court to correct all clerical errors in the underlying judgment. Relator further requests this Court to declare that the plea agreement underlying relator's conviction is void and to grant him an "out of time" appeal.²

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 asserts that this cause arises from a plea bargain in trial court cause number 12-CR-1515-A in the 28th District Court of Nueces County, Texas, resulting in a conviction for misdemeanor assault involving family violence. See TEX. PENAL CODE ANN. § 22.01(a) (West, Westlaw through 2017 R.S.) (defining assault). Under the Texas Penal Code, the offense is enhanced from a misdemeanor to a third-

To be entitled to mandamus relief, the 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 purely ministerial act not involving a discretionary or judicial decision. *In re Harris*, 491 S.W.3d 332, 334 (Tex. Crim. App. 2016) (orig. proceeding); *In re McCann*, 422 S.W.3d 701, 704 (Tex. Crim. App. 2013) (orig. proceeding). If the relator fails to meet both of these requirements, then the petition for writ of mandamus should be denied. *State ex rel. Young v. Sixth Jud. Dist. Ct. of Apps. at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007).

It is the relator's burden to properly request and show entitlement to mandamus relief. *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,” and must also provide “a clear and concise argument for the contentions made, with appropriate citations to authorities and to the appendix or record.” See generally TEX. R. APP. P. 52.3. The relator must furnish an appendix or record sufficient to support the claim for mandamus relief. See *id.* R. 52.3(k) (specifying the required contents for the appendix); R. 52.7(a) (specifying the required contents for the record).

degree felony if the assault is against a family member or involves “dating violence” and the defendant has certain prior convictions, including a prior conviction for assault on a family member. *Id.* § 22.01(b)(2)(A); TEX. FAM. CODE ANN. § 71.0021 (West, Westlaw through 2017 R.S.) (defining “dating violence” and “dating relationship”); *id.* § 71.003 (West 2014) (defining “family”). However, the documentation that relator has submitted with his original proceeding reflects several different trial court cause numbers and convictions.

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that we lack jurisdiction to grant some of the requested relief and that relator has failed to establish his right to mandamus relief as to all other relief sought in this original proceeding. Specifically, this Court does not have mandamus jurisdiction over relator's request to compel the district clerk to file his motion for nunc pro tunc judgment 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 2017 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). Relator has not made such a showing in this case, and accordingly, we lack jurisdiction over his request pertaining to the district clerk. Further, this Court does not have mandamus jurisdiction over relator's request for an out of time appeal. The district court has original jurisdiction to grant post-conviction habeas relief in misdemeanor cases, including the power to grant an out-of-time appeal. See TEX. CONST. art. V, § 8; TEX. CODE CRIM. PROC. ANN. art. 11.05 (West, Westlaw through 2017 R.S.); *Rodriguez v. Court of Appeals, Eighth Supreme Judicial Dist.*, 769 S.W.2d 554, 557 (Tex. Crim. App. 1989). Finally, to the extent that relator seeks to compel the trial court to correct all clerical errors in the underlying judgment and requests that this Court declare that the plea agreement underlying his conviction is void, we conclude that relator has not met his burden to obtain mandamus relief. *In re Harris*, 491 S.W.3d at 334.

We DISMISS this original proceeding in part and DENY it in part as stated herein. Relator's motion for leave to file this original proceeding is DISMISSED as moot. 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; see also *In re Mason*, No. 05-16-01450-CV, 2017 WL 2464688, at *1 (Tex. App.—Dallas June 7, 2017, orig. proceeding) (mem. op.).

GINA M. BENAVIDES,
Justice

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

Delivered and filed the
20th day of September, 2017.