



NUMBER 13-18-00430-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE FRED GUERRA MARTINEZ

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Contreras, Longoria, and Hinojosa
Memorandum Opinion by Justice Hinojosa¹**

Relator Fred Guerra Martinez, proceeding pro se, filed a petition for writ of mandamus in the above cause on August 7, 2018.² Through this original proceeding, relator seeks to compel the State of Texas, acting by and through the District Attorney of

¹ See TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions); *id.* R. 52.8(d) (“When granting relief, the court must hand down an opinion as in any other case,” but when “denying relief, the court may hand down an opinion but is not required to do so.”).

² This original proceeding arises from trial court cause number 14-CR-2389-B and joins other appellate causes arising from this same action. See *In re Martinez*, No. 13-17-00310-CR, 2017 WL 2665266, at *1 (Tex. App.—Corpus Christi June 20, 2017, orig. proceeding) (mem. op., not designated for publication); *Martinez v. State*, No. 13-16-00249-CR, 2017 WL 2200299, at *1 (Tex. App.—Corpus Christi Mar. 16, 2017, pet. ref’d) (mem. op., not designated for publication); *Martinez v. State*, No. 13-15-00084-CR, 2015 WL 1137753, at *1 (Tex. App.—Corpus Christi Mar. 12, 2015, no pet.) (mem. op., not designated for publication) (per curiam).

Nueces County, to surrender allegedly exculpatory evidence. See *Brady v. Maryland*, 373 U.S. 83, 87–88 (1963); see also TEX. CRIM. PROC. CODE ANN. art. 39.14 (West, Westlaw through 2017 1st C.S.).

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 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. As the party seeking relief, the relator has the burden of providing the Court with a sufficient mandamus record to establish his right to mandamus relief. *Lizcano v. Chatham*, 416 S.W.3d 862, 863 (Tex. Crim. App. 2011) (orig. proceeding) (Alcala, J. concurring); *Walker*, 827 S.W.2d at 837; see TEX. R. APP. P. 52.3(k) (specifying the required contents for the appendix); R. 52.7(a) (specifying the required contents for the record).

Article V, Section 6 of the Texas Constitution specifies the appellate jurisdiction of the courts of appeals, and states that the courts of appeals “shall have such other jurisdiction, original and appellate, as may be prescribed by law.” TEX. CONST. art. V, § 6. As an appellate court, our original jurisdiction is governed by section 22.221 of the Texas Government Code. See TEX. GOV’T CODE ANN. § 22.221 (West, Westlaw through 2017 1st C.S.); see also *In re Cook*, 394 S.W.3d 668, 671 (Tex. App.—Tyler 2012, orig. proceeding). In pertinent part, this section provides that we may issue writs of mandamus and “all other writs necessary to enforce the jurisdiction of the court.” See TEX. GOV’T CODE ANN. § 22.221(a). This section also provides that we may issue writs of mandamus “agreeable to the principles of law regulating those writs” against:

- (1) a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district;
- (2) a judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district; or
- (3) an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code, in the court of appeals district for the judge who appointed the associate judge.

Id. § 22.221(b).

Relator’s petition seeks mandamus relief against the State of Texas, acting by and through the District Attorney. However, we do not have original jurisdiction against a district attorney. See generally *id.* § 22.221(b); *In re Meyer*, 482 S.W.3d 706, 709 (Tex. App.—Texarkana 2016, orig. proceeding). Further, relator has not demonstrated that the requested relief is necessary to enforce our jurisdiction. See TEX. GOV’T CODE ANN. § 22.221(a); *In re Washington*, 7 S.W.3d 181, 182 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding) (per curiam).

The Court, having examined and fully considered the petition for writ of mandamus, is of the opinion that relator has not established this Court's jurisdiction over the relief sought. Accordingly, we DISMISS the petition for writ of mandamus for want of jurisdiction.

LETICIA HINOJOSA
Justice

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

Delivered and filed the
8th day of August, 2018.