



NUMBER 13-18-00437-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE VICTOR PRIETO AZAMAR

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Chief Justice Valdez¹**

Relator Victor Prieto Azamar, proceeding pro se, filed a petition for writ of mandamus in the above cause on August 10, 2018, seeking to compel the trial court to provide him with copies of his trial records to use in a future habeas application. Relator contends that the clerk's record and reporter's record "were prepared and never made available to [him] in violation of Texas law."

On August 22, 2013, appellant was convicted of aggravated sexual assault. This

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.").

Court affirmed relator's conviction on direct appeal. See *Azamar v. State*, No. 13-13-00488-CR, 2015 WL 2452611, at *1 (Tex. App.—Corpus Christi May 21, 2015, no pet.) (mem. op., not designated for publication); see also *In re Azamar*, No. 13-18-00312-CR, 2018 WL 3104123, at *1 (Tex. App.—Corpus Christi June 25, 2018, orig. proceeding) (mem. op., not designated for publication) (denying mandamus relief regarding the provision of the trial records to relator); *Azamar v. State*, 13-17-00479-CR, 2017 WL 4837846, at *1 (Tex. App.—Corpus Christi Oct. 26, 2017, no pet.) (mem. op., not designated for publication) (dismissing relator's appeal for want of jurisdiction).

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).

Generally, courts of appeals do not have authority to issue writs of mandamus regarding complaints that may only be raised by a post-conviction habeas corpus proceeding. See *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991); see also *In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding). However, “when there is no pending application for habeas corpus filed under Article 11.07 of the Code of Criminal Procedure, the appellate court is not without jurisdiction to rule on mandamus petitions relating to a motion requesting access to material that could be used in a future habeas application.” *Padieu v. Court of Appeals of Tx., Fifth Dist.*, 392 S.W.3d 115, 118 (Tex. Crim. App. 2013).

Here, relator seeks access to the record to pursue a future application for writ of habeas corpus. “As a matter of constitutional equal protection, an indigent criminal defendant is entitled to a free transcript of prior proceedings when that transcript is needed for an effective defense or appeal.” *Escobar v. State*, 880 S.W.2d 782, 783 (Tex. App.—Houston [1st Dist.] 1993, no pet.); *In re Strickhausen*, 994 S.W.2d 936, 937 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding). An indigent inmate is not, however, entitled—either as a matter of equal protection or due process—to a free record “merely for the purpose of searching it for a possible application for habeas corpus or other post-conviction relief.” *Escobar*, 880 S.W.2d at 784. To obtain the production of a free record for such purposes, an indigent inmate must make a showing that the habeas

corpus proceeding is not frivolous and that there is a specific need for the record being sought. *In re Coronado*, 980 S.W.2d 691, 693 (Tex. App.—San Antonio 1998, orig. proceeding); *Escobar*, 880 S.W.2d at 784.

The Court, having examined and fully considered the petition for writ of mandamus, is of the opinion that relator has not shown himself entitled to the relief sought. Accordingly, we deny the petition for writ of mandamus.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

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

Delivered and filed this
13th day of August, 2018.