



NUMBER 13-18-00548-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE TRAVIS WARREN

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Benavides¹

Travis Warren, proceeding pro se, filed a “Motion for Judgment and Sentence Nunc Pro Tunc” in the above cause. Warren requests that we order the Texas Department of Criminal Justice—Institutional Division (TDCJ) to remove the detainer or “hold” placed on him on grounds that it is rendering him ineligible for educational, vocational, and rehabilitation programs. See *Ex parte Bynum*, 772 S.W.2d 113, 115 (Tex. Crim. App. 1989) (per curiam) (op. on reh’g) (noting that a detainer or hold “may

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.”).

have adverse effects” upon a defendant including the denial of opportunities open to other prisoners, the curtailment of privileges, or the impairment of a chance for early parole). Relator’s pleading does not reference an order or judgment subject to appeal but does seek to compel a public officer to perform an act. Accordingly, we construe this pleading as a petition for writ of mandamus. See *generally* TEX. R. APP. P. 25.1(a), (d); *In re Castle Tex. Prod. Ltd. P’ship*, 189 S.W.3d 400, 403 (Tex. App.—Tyler 2006, orig. proceeding) (“The function of the writ of mandamus is to compel action by those who by virtue of their official or quasi-official positions are charged with a positive duty to act.”); *In re Moody*, 93 S.W.3d 928, 929 (Tex. App.—Amarillo 2003, orig. proceeding) (construing a motion filed in the appellate court as an original proceeding).

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.”); see *generally* TEX. R. APP. P. 52.3.

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. This Court's 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, section 22.221 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 against “a judge of a district or county court in the court of appeals' district,” or against a judge of a district court who is acting as a magistrate at a court of inquiry in the court of appeals' district. See *id.* § 22.221(b).

Relator's petition seeks mandamus relief against the TDCJ. However, relator does not seek relief against a judge of a district or county court; so, section 22.221(b) does not enable us to act. See TEX. GOV'T CODE ANN. § 22.221(b); *In re Moody*, 93 S.W.3d at 929. 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 Richardson*, 327 S.W.3d 848, 851 (Tex. App.—Fort Worth 2010, orig. proceeding); *In re Phillips*, 296 S.W.3d 682, 684 (Tex. App.—El Paso 2009, orig. proceeding); *In re Washington*, 7 S.W.3d 181, 182 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding). In short, the issuance of a writ of mandamus is not necessary under § 22.221(a) to enforce our jurisdiction over a pending matter.

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that the relator has not shown himself entitled to the relief sought. See TEX. GOV'T CODE ANN. § 22.221(a),(b); *In re Moody*, 93 S.W.3d at 929. Relator has not shown that we have original jurisdiction in this matter. Accordingly, we dismiss the petition for writ of mandamus for want of jurisdiction. See

TEX. R. APP. P. 52.8.

GINA M. BENAVIDES,
Justice

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

Delivered and filed the
3rd day of October, 2018.