

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

§
08-12-00269-CR
§
AN ORIGINAL PROCEEDING
IN RE: GILBERT FIELDING §
IN MANDAMUS §
§

MEMORANDUM OPINION

Gilbert Fielding, Relator, has filed a *pro se* petition seeking mandamus relief from the alleged failure of the Honorable Mary Ann Bramblett, Judge of the 41st District Court, to act upon his March 8, 2012 motion to appoint counsel to aid him in filing a motion for DNA testing pursuant to chapter 64 of the Texas Code of Criminal Procedure. TEX.CODE CRIM.PROC.ANN. art. 64.01(c)(West Supp. 2012). To obtain 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. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex.Crim.App. 2007). Relator has failed to establish his entitlement to mandamus relief.

Relator argues that Judge Bramblett abused her discretion by not acting upon his motion and appointing counsel to assist him. However, Relator has not shown that Judge Bramblett abused her discretion. Among other things, Relator failed to provide us with “a certified or sworn copy of every document that is material to the relator’s claim for relief” *See* TEX.R.APP.P.

52.7(a)(1). Indeed, Relator did not provide us with a copy of the motion, whether sworn, certified, or otherwise. Moreover, Relator not only failed to certify that every factual statement in his petition is supported by competent evidence in an appendix or record, but he also failed to furnish an appendix or record with his petition. *See* TEX.R.APP.P. 52.3(j), (k), 52.7.

Based on the absence of a record, we conclude that Relator is not entitled to mandamus relief. Accordingly, the petition is denied. *See* TEX.R.APP.P. 52.8(a). Relator's motion for leave to proceed *in forma pauperis* is denied as moot.

September 12, 2012

CHRISTOPHER ANTCLIFF, Justice

Before McClure, C.J., Rivera, and Antcliff, JJ.

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