

DENIED and Opinion Filed December 7, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-21-00933-CV

IN RE MARK LYLE BELL, Relator

**Original Proceeding from the 401st Judicial District Court
Collin County, Texas
Trial Court Cause No. 401-8120008**

MEMORANDUM OPINION

Before Justices Molberg, Reichek, and Smith
Opinion by Justice Smith

Mark Lyle Bell petitions the Court for a writ of mandamus to compel the trial court to grant his motion for post-conviction DNA testing. Relator has filed two petitions, the first on October 22, 2021, and the second on November 4, 2021. Concluding neither petition meets the requirements of rule of appellate procedure 52, we deny relief. Relator has also filed motions seeking permission to file his petitions. Because such motions are unnecessary, we deny them as moot. *See* TEX. R. APP. P. 52.1.

A petition seeking mandamus relief must include a certification stating that the relator “has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.”

TEX. R. APP. P. 52.3(j). The certification must state substantially what is written in rule 52.3(j). *See In re Butler*, 270 S.W.3d 757, 758 (Tex. App.—Dallas 2008, orig. proceeding).

In this case, relator has filed an “Unsworn Declaration” with each petition. In the first petition, relator states that he does “declare under the penalty of perjury that the forgoing Writ of Mandamus is true and correct to the best of my ability and pursuant to CPRS §134.005.” In the second petition, relator includes a slightly different “Unsworn Declaration,” stating that he does “declare under the penalty of perjury that the forgoing Writ of Mandamus is true and correct to the best of my ability and pursuant to §134.005.” Relator’s unsworn declarations do not indicate that the statements in the petitions are supported by competent evidence in the appendix or record. Thus his certifications do not meet the requirement of rule 52.3(j). *See id.*

Moreover, relator could not provide a conforming certification because his petitions are not accompanied by a sufficient record to support his assertions. Relator bears the burden to provide the Court with a sufficient record to establish his right to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). To meet his evidentiary burden, rule 52.3(k)(1)(A) requires relator to file an appendix with his petition that contains “a certified or sworn copy of any order complained of, or any other document showing the matter complained of.” TEX. R. APP. P. 52.3(k)(1)(A). Rule 52.7(a)(1) requires relator to file with the petition

“a certified or sworn copy of every document that is material to the relator’s claim for relief that was filed in any underlying proceeding.” TEX. R. APP. P. 52.7(a)(1). Relator’s status as an inmate does not relieve him of his duty to comply with the rules of appellate procedure. *In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (per curiam).

Relator’s first petition does not contain any supporting record. His second petition is supported only by his hand-copied reproduction of a letter he alleges he received from the Collin County District Clerk stating the clerk had filed his motion seeking DNA testing on July 15, 2021. There are no copies of the motions relator seeks to have enforced, and relator’s reproduction of the letter from the district clerk is not a certified or sworn copy as required by rules 52.3 and 52.7.

Without a record of documents to support his petitions, relator cannot show he is entitled to mandamus relief. *See Butler*, 270 S.W.3d at 759; *see also In re Prado*, 522 S.W.3d 1, 2 (Tex. App.—Dallas 2017, orig. proceeding) (mem. op.) (to obtain mandamus relief for failure to rule on motion, relator must show (1) trial court had legal duty to rule on motion, (2) relator requested ruling, and (3) trial court failed or refused to rule); *In re Blakeney*, 254 S.W.3d 659, 661–62 (Tex. App.—Texarkana 2008, orig. proceeding) (no mandamus relief absent proof motion was filed, presented to the trial court with a request for a ruling, and trial court given reasonable time to issue ruling).

We deny the petitions for writ of mandamus without prejudice to filing a new petition that corrects the deficiencies described in this opinion.

/Craig Smith/

CRAIG SMITH
JUSTICE

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