

DENIED and Opinion Filed January 5, 2022



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

No. 05-21-00519-CV

IN RE JEROME JOHNSON, Relator

**Original Proceeding from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F01-53637-JH**

MEMORANDUM OPINION

Before Justices Schenck, Nowell, and Garcia
Opinion by Justice Nowell

Jerome Johnson has filed a petition for a writ of mandamus to compel the trial court to rule upon a pending motion for judgment nunc pro tunc. Relator seeks to correct alleged errors in the reporter's record and clerk's record prepared for the direct appeal of his 2003 conviction for sexual assault. *See Johnson v. State*, No. 05-03-01058-CR, 2005 WL 647516 (Tex. App.—Dallas Mar. 22, 2005, pet. ref'd) (not designated for publication). Relator has also filed motions for disclosure, discovery, and inspection of various records; to take judicial notice of documents filed in a closed mandamus proceeding assigned cause no. 05-21-00487-CV; and to conduct a court of inquiry regarding his claims. We deny relief on both the petition and the motions.

Initially, we note there are issues with the authentication of relator's record. 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 relator's claim for relief that was filed in any underlying proceeding." TEX. R. APP. P. 52.7(a)(1).

None of the documents appellant has filed with his mandamus petition are certified or sworn copies, although some bear file stamps from the trial court clerk. Likewise, the documents he seeks to incorporate into the record through judicial notice are unsworn and uncertified, although some bear file stamps. Without a properly authenticated record that meets the requirements of the rules of appellate procedure, appellant cannot show he is entitled to mandamus relief. *See In re Butler*, 270 S.W.3d 757, 759 (Tex. App.—Dallas 2008, orig. proceeding).

Moreover, even if we could accept appellant's unauthenticated documents, he would not be entitled to mandamus relief. To obtain mandamus relief in a criminal case, relator must show that he seeks to compel performance of a ministerial act and that he has no legal remedy at law. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding). Consideration of a motion that is

properly filed and before the court is a ministerial act. *In re Prado*, 522 S.W.3d 1, 2 (Tex. App.—Dallas 2017, orig. proceeding) (mem. op.). To obtain relief from a trial court’s refusal to act on a motion, relator must show the trial court had a legal duty to rule on the motion, relator requested a ruling, and the trial court failed or refused to do so. *Id.*

After the trial court’s plenary jurisdiction expires, it does not retain general jurisdiction over a case. *State v. Patrick*, 86 S.W.3d 592, 594 (Tex. Crim. App. 2002) (plurality op.). The trial court retains limited jurisdiction to address certain matters such as ensuring that a higher court’s mandate is carried out, fact finding on habeas applications, and determining whether a convicted person is entitled to post-conviction DNA testing. *Id.*

Among the powers the trial court retains is the power to issue a judgment nunc pro tunc correcting a clerical error in its judgment. *In re Hancock*, 212 S.W.3d 922, 927 (Tex. App.—Fort Worth 2007, orig. proceeding). The purpose of a judgment nunc pro tunc is to correct the record when the judgment in the record does not accurately reflect the judgment actually pronounced in court. *Blanton v. State*, 369 S.W.3d 894, 897–98 (Tex. Crim. App. 2012). The corrections may not modify, alter, or change the original judgment pronounced in court; effectively make a new order; or change the record to reflect what the trial court believes should have occurred in the original proceeding. *Id.* at 898.

The unauthenticated copy of relator’s motion attached to the petition is styled, “Motion for Judgment of Nunc Pro Tunc, To Correct Clerical Errors and, Mistake’s of Omission Within Clerk’s and Reporter’s Records, and Transcripts [sic].” When construing a motion, we consider the substance of the filing and not just the label attached to it. *Skinner v. State*, 484 S.W3d 434, 437 (Tex. Crim. App. 2016). Although styled as seeking a judgment nunc pro tunc, the motion does not seek to correct any errors in the judgment. Rather, it requests the trial court enter an order to direct the court reporter to make changes to the reporter’s record and clerk’s record to reflect appellant’s version of what happened in his 2003 trial.

Because relator does not seek any actual nunc pro tunc relief, the trial court lacks jurisdiction to rule on relator’s motion. *See Skinner*, 484 S.W3d at 437; *Patrick*, 86 S.W.3d at 594. The trial court does not have a duty to advise a movant that it lacks authority to consider a motion, although the preferred and better practice is to give such notice. *In re Holland*, No. 05-21-00435-CV, 2021 WL 4189954, at *1 (Tex. App.—Dallas Sept. 15, 2021, orig. proceeding) (mem. op.); *In re Hogg-Bey*, No. 05-15-01421-CV, 2015 WL 9591997, at *2 (Tex. App.—Dallas Dec. 30, 2015, orig. proceeding) (mem. op.).

Because relator has failed to file an authenticated record supporting his petition, and because the record he has filed, if believed, shows the trial court lacks jurisdiction to rule on the motion, relator has not shown that he has a right to mandamus relief. *See Butler*, 270 S.W.3d at 759; *Holland*, 2021 WL 4189954, at *1.

We deny the petition for writ of mandamus. We further deny all pending motions in this proceeding.

210519f.p05

/Erin A. Nowell//

ERIN A. NOWELL

JUSTICE