

Opinion issued January 27, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00973-CV

CHESTER WILLIAM INGRAM, Appellant

V.

TEXAS BOARD OF PARDONS AND PAROLE, Appellee

**On Appeal from the 334th District Court
Harris County, Texas
Trial Court Case No. 2008-22457**

MEMORANDUM OPINION

Appellant, Chester William Ingram, appeals the trial court's order denying his petition for expunction of criminal records. In a single issue, appellant

contends that the trial court abused its discretion in denying his petition. We affirm.

BACKGROUND

On April 18, 1991 a Harris County grand jury indicted appellant for “unlawfully intentionally and knowingly” abducting a woman without her consent on March 1, 1988 with the intent to “prevent her liberation by secreting and holding [her] in a place where [she] was not likely to be found and with intent to inflict bodily injury on [her]. . . violate and abuse [her] sexually . . . and with intent to terrorize [her].” The Harris County District Attorney dismissed the case against appellant after he was convicted in a similar case and sentenced to forty years confinement in the Institutional Division of the Texas Department of Criminal Justice. Specifically, on June 5, 1991, a Harris County jury found appellant guilty of aggravated kidnapping in connection with an offense that occurred in Polk County on November 8, 1989.¹ In a Special Issue, the jury found beyond a reasonable doubt that appellant did not voluntarily release the victim alive and in a safe place. Appellant is currently incarcerated on that conviction.

On April 10, 2008, appellant filed a verified petition in which he sought the expunction of all records and files pertaining to the April 18, 1991 indictment

¹ The case was transferred to Harris County on April 30, 1991.

pursuant to article 55.01(a)(2) of the Texas Code of Criminal Procedure.² Appellant alleged in his petition that he met all of the statutory requirements for expunction. The Texas Department of Criminal Justice, the Board of Pardons and Paroles, the Polk County District Attorney's Office, the Harris County District Clerk, the Harris County Sheriff's Office, and the Harris County District Attorney's Office (collectively, "the State") all filed either oppositions to appellant's petition or general denials.

The court held a hearing on appellant's petition on August 1, 2008. At the conclusion of the hearing, the court took the matter under advisement to permit appellant time to decide whether he wished to object to any of the exhibits offered by the State. Appellant filed a motion in which he opposed the admission of all but two of the State's exhibits and submitted two of his own exhibits "for inclusion in the record." Appellant's exhibits—the affidavit of his sister, Beverly Bullock, and his own unsworn declaration—were attached to his pleading.³ The court overruled appellant's objections and admitted all of the State's exhibits into evidence.

After considering the parties' written submissions, the statements of the parties during the hearing, the applicable law and the submitted evidence, the court denied appellant's petition. In separate findings of fact and conclusions of law, the court found, *inter alia*, that the evidence was insufficient to demonstrate that

² See TEX. CRIM. PROC. CODE ANN. art. 55.01(a)(2) (West Supp. 2010).

³ Appellant also filed a separate supplement to his petition.

appellant satisfied all of the statutory requirements for expunction and concluded that appellant failed to meet his burden of proof.

DISCUSSION

We review a trial court's ruling on a petition for expunction for abuse of discretion. *Heine v. Tex. Dep't of Pub. Safety*, 92 S.W.3d 642, 646 (Tex. App.—Austin 2002, pet. denied). The cause of action created by the expunction statute is civil rather than criminal in nature, and the burden of proving compliance with the statutory requirements rests with the petitioner. *Houston Police Dep't v. Berkowitz*, 95 S.W.3d 457, 460 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) (citing *Tex. Dep't of Pub. Safety v. Katopodis*, 886 S.W.2d 455, 457 (Tex. App.—Houston [1st Dist.] 1994, no writ)). When a party files a general denial, as in the present case, the petitioner must testify or produce other evidence to prove the facts alleged in the petition—he cannot simply rest on the allegations in his pleadings. *See Ex parte Jackson*, 132 S.W.3d 713, 716 (Tex. App.—Dallas 2004, no pet.). If a petitioner demonstrates that he has satisfied each of the statutory requirements, the trial court has no discretion to deny the request for an expunction. *State v. Echeverry*, 267 S.W.3d 423, 425–26 (Tex. App.—Corpus Christi 2008, pet. denied).

Appellant contends that he is entitled to expunction because he offered uncontroverted testimony during the hearing that he met each of the statutory

requirements and he filed an unsworn declaration and an affidavit attesting to the same facts after the hearing. Because the appellate record does not include a transcript of the hearing, we cannot consider any testimony that may have been given at that hearing for purposes of our review. *See Quorum Int'l v. Tarrant Appraisal Dist.*, 114 S.W.3d 568, 572 (Tex. App.—Fort Worth 2003, pet. denied) (stating that appellate court is bound to determine case on record as filed and cannot look outside record to discover relevant facts); *see also Carlisle v. Philip Morris, Inc.*, 805 S.W.2d 498, 501 (Tex. App.—Austin 1991, writ denied) (stating that appellate courts may not consider matters outside appellate record). We hold that appellant failed to show that the trial court erred by determining that he did not prove that he satisfied all of the statutory requirements for expunction. We overrule appellant's sole issue.

CONCLUSION

We affirm the judgment of the trial court.

Jim Sharp
Justice

Panel consists of Justices Jennings, Alcala, and Sharp.