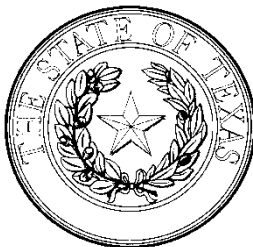


Opinion issued October 19, 2017



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00425-CR

EX PARTE ARON DANIEL BOOTH, APPELLANT

**On Appeal from the County Criminal Court at Law No. 3
Harris County, Texas
Trial Court Case No. 2136131**

MEMORANDUM OPINION

Appellant, Aron Daniel Booth, appeals from the trial court's denial of his application for writ of habeas corpus.¹ In his application for writ of habeas corpus,

¹ See TEX. CODE CRIM. PROC. ANN. art. 11.09 (West 2015) (providing person confined on charge of misdemeanor offense may apply for writ of habeas corpus); *Tatum v. State*, 846 S.W.2d 324, 327 (Tex. Crim. App. 1993) ("If a misdemeanor judgment is void, and its existence may have detrimental collateral consequences in some future proceeding, it may be collaterally attacked, whether or not a term of

appellant argues that (1) he received ineffective assistance of counsel because his trial counsel failed to accurately advise him regarding expunction and (2) his plea was involuntary because he believed at the time of his plea that the conviction would be eligible for expunction.

We affirm.

Background

According to his application, appellant was charged with misdemeanor assault.² Appointed counsel, Troy Bollinger, represented appellant. On August 11, 2005, appellant pleaded guilty and the trial court fined appellant \$200. We do not have a record of the admonishments given to appellant in 2005.

Appellant filed an application for writ of habeas corpus on January 9, 2017, challenging the voluntariness of his guilty plea based on allegedly ineffective assistance of counsel. Appellant argued that “Mr. Bollinger advised [him] that pleading guilty to the Class C offense would make him eligible for an expunction. [Appellant] would not have otherwise accepted the deal, because he did not want a permanent criminal record from this case. Believing that the case would be eligible to be expunged, Mr. Booth pleaded guilty and paid a \$200 fine.” Appellant argues

probation was successfully served out.”); *see also State v. Collazo*, 264 S.W.3d 121, 126 (Tex. App.—Houston [1st Dist.] 2007, pet. ref’d).

² *See* TEX. PENAL CODE ANN. § 22.01(a) (Vernon 2014).

that he suffers from collateral consequences as a result of receiving inaccurate advice on expunction because he has experienced a reduction in job opportunities. The trial court denied his application on April 25, 2017. Appellant timely filed a notice of appeal on May 25, 2017.

The trial court clerk filed the clerk's record on June 12, 2017. The reporter's record in this case was due June 9, 2017. *See* TEX. R. APP. P. 4.1(a), 31.1. However, the court reporter notified this Court that appellant had not paid for the reporter's record. This Court's Clerk notified appellant that the Court might consider his appeal without a reporter's record unless he: (1) caused the record to be filed in this Court by paying for the record; (2) filed proof that he had made arrangements to pay the reporter's fee to prepare the reporter's record; or (3) filed proof that he is entitled to proceed without payment of costs by June 22, 2017. *See* TEX. R. APP. P. 31.1 (requiring reporter to prepare and certify record if requested by appellant); *see also* TEX. R. APP. P. 34.6(b)(1) (requiring appellant to request in writing that reporter prepare record), 35.3(b) (imposing duty on court reporter to prepare, certify, and file reporter's record if appellant requests and pays for record), 37.3(c) (authorizing appellate court to consider case without reporter's record if appellant fails to request or pay for record). Appellant has not responded to this Court's notice, and this Court has not received the reporter's record for the hearing on appellant's application.

Texas Rule of Appellate Procedure 37.3 allows courts to review a case without the reporter's record. The rule provides that when "the appellant failed to request a reporter's record" or when "appellant [has] failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and . . . the appellant is not entitled to proceed without payment of costs," the appellate court "may—after first giving the appellant notice and a reasonable opportunity to cure—consider and decide those issues or points that do not require a reporter's record for a decision." TEX. R. APP. P. 37.3(c). In the absence of a reporter's record, an appellate court considering a habeas corpus application will presume that there was evidence to support the trial court's judgment. *See In re Mott*, 137 S.W.3d 870, 875 (Tex. App.—Houston [1st Dist.] 2004, orig. proceeding). Nevertheless, in a proceeding to review a denial of an application for writ of habeas corpus, the applicant still bears the burden of proving that he is entitled to relief by a preponderance of the evidence. *Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002).

In reviewing the trial court's order denying habeas corpus relief, the appellate court affords "almost total deference to the judge's determination of the historical facts that are supported by the record, especially when the fact findings are based on an evaluation of credibility and demeanor." *Ex parte Wilson*, 171 S.W.3d 925, 928 (Tex. App.—Dallas 2005, no pet.); *see also Phuong Anh Thi Le v. State*, 300 S.W.3d 324, 327 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (holding that, in reviewing

trial court's ruling on habeas corpus petition, reviewing court must defer to all of trial court's implied factual findings supported by record). The appellate court "will sustain the lower court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case." *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006).

Here, where all of the evidence was presented at the hearing on the application for a writ of habeas corpus, unless a complete record is filed, nothing is presented for review. *See Ex parte Henderson*, 565 S.W.2d 50, 51–52 (Tex. Crim. App. 1978) (holding that trial court's judgment in habeas corpus proceeding will be affirmed if appellant fails to request or pay, if appellant is able to do so, for reporter's record); *Ex parte Sims*, 565 S.W.2d 45, 49 (Tex. Crim. App. 1978) (op. on reh'g) ("We hold . . . that in a habeas corpus proceeding the judgment will be affirmed absent a statement of facts or bills of exception where nothing has been presented for review."); *Ex parte McKeand*, 454 S.W.3d 52, 55 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding) ("Because appellant failed to file a complete record of his habeas corpus proceeding, nothing is presented for our review."); *see also* TEX. R. APP. P. 37.3(c) (providing that, after giving notice and opportunity to cure, this Court may only consider issues that do not require reporter's record).

The reporter's record in this case was due June 9, 2017, but appellant has yet to file the reporter's record of the habeas hearing. On June 12, 2017, this Court

notified appellant that his reporter's record was past due and ordered him to file the record within ten days. The Court also informed him that the Court would consider his appeal without a reporter's record unless he provided proof that the record was to be filed or caused the record to be filed by June 22, 2017. Appellant did not cause the record to be filed. Because appellant failed to file a complete record of his habeas corpus proceeding, nothing is presented for our review. *See* TEX. R. APP. P. 37.3(c); *Ex parte Sims*, 565 S.W.2d at 49; *Ex parte McKeand*, 454 S.W.3d at 54.

Conclusion

We affirm the trial court's order that denied appellant habeas corpus relief.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Keyes and Caughey.

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