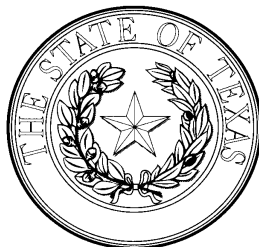


Opinion issued January 9, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00616-CR

EX PARTE JAWAID RIAZ, Appellant

**On Appeal from the County Court at Law No. 2
Galveston County, Texas
Trial Court Case No. CV-0078613**

MEMORANDUM OPINION

Jawaid Riaz was detained in the George Bush International Airport when he returned from overseas travel. He was declared inadmissible, in part because of a 2014 misdemeanor theft conviction. He is currently awaiting deportation.¹

¹ See 8 U.S.C. § 1227(a)(2)(A)(ii) (“Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined

In an attempt to avoid deportation, Riaz filed an Article 11.09 application for writ of habeas corpus.² The trial court issued an order for affidavits addressing the claims and designating issues of fact to be resolved. The trial court held a hearing and denied the application. Riaz now appeals.

The court reporter advised that Riaz neither requested the reporter's record nor made arrangements to pay for it.³ The appellate record shows that Riaz is represented by retained counsel who has not withdrawn. Riaz was notified, through his retained counsel, that no payment arrangements had been made for the reporter's record and that the case would be considered without the reporter's record unless he filed a response or provided proof of inability to pay.⁴ Riaz did not respond, and no reporter's record has been filed.

therefor and regardless of whether the convictions were in a single trial, is deportable.”).

² TEX. CODE CRIM. PROC. art. 11.09 (“If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed . . .”).

³ *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 court reporter prepare record); TEX. R. APP. P. 35.3(b) (requiring court reporter to prepare, certify, and file reporter's record if appellant request and pays for record).

⁴ TEX. R. APP. P. 37.3(c) (authorizing appellate court to consider appeal without reporter's record if appellant fails to request or pay for record).

Absent a reporter's record, the appellant in a habeas appeal bears the burden of proving entitlement to relief by a preponderance of evidence in the record. *See Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002); *Ex parte McKeand*, 454 S.W.3d 52, 54 (Tex. App.—Houston [1st Dist.] 2014, no pet.). When the appellant has not requested or paid for the reporter's record despite notice and an opportunity to cure, this court has held that nothing is presented for review. *See McKeand*, 454 S.W.3d at 54; *Ex parte Booth*, No. 01-17-00425-CR, 2017 WL 4682261, at * 2 (Tex. App.—Houston [1st Dist.] Oct. 19, 2017, no pet.); *Ex parte Wiley*, No. 01-14-00010-CR, 2014 WL 2936004, at *1 (Tex. App.—Houston [1st Dist.] June 26, 2014, no pet.).

We afford “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.). If there are no trial court findings, the appellate court must defer to all implied factual findings that are supported by the record. *See Phuong Anh Thi Li v. State*, 300 S.W.3d 324, 327 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Thus, the reviewing court must uphold the trial 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, the trial court stated in its order that it held a hearing and “considered the testimony and evidence, arguments of counsel, and the law.” Thus evidence that the trial court relied upon in making its ruling was presented at the hearing, but we have no record of it. *See McKeand*, 454 S.W.3d at 54. Riaz was notified of the failure to file a reporter’s record and did not cure the deficiency after notice and an opportunity to cure. Because we lack a complete record, nothing is presented for our review. *See* TEX. R. APP. P. 37.3(c); *McKeand*, 454 S.W.3d at 54; *Booth*, 2017 WL 4682261, at *2; *Wiley*, 2014 WL 2936004, at *1.

Accordingly, we affirm the trial court’s order denying the application for writ of habeas corpus.

PER CURIAM

Panel consists of Justices Jennings, Massengale, and Caughey.
Do not publish. TEX. R. APP. P. 47.2(b).