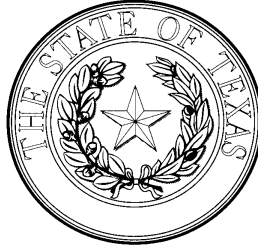


Opinion issued October 22, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00681-CR

IN RE DEVIN PAUL COLE, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Devin Paul Cole, incarcerated and acting pro se, has filed a petition for writ of mandamus, seeking to “[c]ompel [r]ight to [s]elf-[r]epresentation [a]nd [a]rticle 17.151 [p]ersonal [r]ecognizance [b]ond [h]earing.”¹ In the alternative,

¹ Texas Code of Criminal Procedure article 17.151 provides that a defendant is entitled to release if the State is not prepared for trial by a certain date. TEX. CODE CRIM. PRO. ANN. art. 17.151. On March 29, 2020, Governor Greg Abbott issued an executive order suspending article 17.151 “to the extent necessary to prevent any person’s automatic release on personal bond because the State is not ready for

relator requests a dismissal of the indictment “if []his case is not set for [trial] and a [j]ury of 4 Whites, 4 Hispanics and 4 Blacks has been selected and [voir dire] has been accomplished, and the case actually starts a [t]rial by [j]ury within 30 days” from the date he filed his petition for mandamus relief.

We deny the petition for writ of mandamus.²

First, relator’s request for relief to compel his right to self-representation is moot. On October 1, 2020, the trial court conducted a hearing on relator’s request to represent himself pro se and on his trial counsel’s motion to withdraw. The trial court permitted relator’s counsel to withdraw from representation, allowing relator to proceed pro se. *See In re Bonilla*, 424 S.W.3d 528, 534 (Tex. Crim. App. 2014) (where relator was provided what he sought in his petition for writ of mandamus, dispute rendered moot); *In re Woods*, 261 S.W.3d 340, 340–41 (Tex. App.—Waco 2008, orig. proceeding) (relator’s petition for writ of mandamus seeking to compel trial court to rule on his motion rendered moot when trial court granted motion).

Second, relator’s petition does not comply with the requirements enumerated in the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 52.3(a)–(d), (f), (g), (j), (k); 52.7(a). Among other things, the petition lacks an adequate appendix

trial.” *See* The Governor of the State of Tex., Relating to Detention in County and Municipal Jails During the COVID–19 Disaster, 45 TEX. REG. 2368 (2020).

² The underlying case is *State of Texas v. Devin Paul Cole*, Cause No. 1666250, pending in the 184th District Court of Harris County, Texas, the Honorable Abigail Anastasio presiding.

and record. *See* TEX. R. APP. P. 52.3(k)(1) (requiring original proceedings to be filed with appendix 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. 52.7(a) (requiring relator to file with his petition “a certified or sworn copy of every document that is material to the relator’s claim for relief and that was filed in any underlying proceeding”). In the absence of an adequate appendix and record, this Court cannot evaluate the merits of relator’s petition. *See In re McCreary*, No. 12-15-00067-CR, 2015 WL 1395783, at *1 (Tex. App.—Tyler Mar. 25, 2015, orig. proceeding) (mem. op., not designated for publication) (“Without an appendix and a record, we are unable to determine that [r]elator is entitled to mandamus relief”).

Finally, relator’s petition is deficient because there is no showing that the trial court refused to rule on relator’s request for a Texas Code of Criminal Procedure article 17.151 hearing or on any other motion. *See O’Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (to obtain mandamus relief, relator must show respondent had legal duty to perform non-discretionary act, relator made demand for performance, and respondent refused); *In re Dong Sheng Huang*, 491 S.W.3d 383, 385–86 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding) (“Filing a request for a ruling is insufficient to call the matter to the

judge's attention because a judge may be unaware of the request. Instead, the party demanding a ruling must set its request either for submission or a hearing.”).

Accordingly, we deny relator’s petition for writ of mandamus. All pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Kelly, Goodman, and Countiss.

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