

Opinion issued November 2, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00561-CR

NO. 01-21-00562-CR

IN RE JOSEPH THOMAS ROBERTS, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Joseph Thomas Roberts, appearing pro se, has filed a petition for writ of mandamus, stating that he “filed timely [pro se] motions [in the trial court] requesting [an] appeal and requesting [appellate] attorney/counsel.”¹ Roberts asserts

¹ The underlying cases are *The State of Texas v. Joseph Thomas Roberts*, Cause Nos. 21-DCR-0095 and 21-DCR-0097, in the 344th District Court of Chambers County, Texas, the Honorable Randy McDonald presiding.

that “the trial court has not or will not acknowledge or rule on said motions,” and requests that this Court issue a writ of mandamus “grant[ing] permission and [issuing an] order [to] proceed toward [an] out of time appeal” and “order[ing] the [trial court to] appoint” him appellate counsel.²

We dismiss Roberts’ petition for lack of jurisdiction.

As noted above, Roberts has filed his petition for writ of mandamus with this Court pro se, and purportedly filed the complained-of motions in the trial court pro se. However, in his mandamus petition, Roberts acknowledges that he is represented by counsel in the trial court. Generally, criminal defendants are not entitled to hybrid representation and a “trial court is free to disregard any pro se motions presented by a defendant who is represented by counsel.” *Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007). As such, even assuming that Roberts’ pro se motions were properly filed and presented to the trial court, the trial court had no obligation to consider or rule on them. *See id.* (concluding “a trial court’s decision not to rule on a pro se motion” is not “subject to review”).

Similarly, Roberts is not entitled to hybrid representation in this Court, and his pro se petition for writ of mandamus presents nothing for this Court to review.

² Roberts filing with this Court is titled a “Motion for Leave to File Writ of Mandamus.” However, the Texas Rules of Appellate Procedure no longer require a relator to file a motion for leave in an original proceeding. *See generally* TEX. R. APP. P. 52 & cmt. Accordingly, we construe relator’s motion for leave as a petition for writ of mandamus.

See Ex parte Bohannon, 350 S.W.3d 116, 116 n.1 (Tex. Crim. App. 2011) (where habeas applicant was represented by counsel, court must disregard and take no action on pro se filings); *In re Alexander*, No. 01-21-00335-CR, 2021 WL 2931347, at *1 (Tex. App.—Houston [1st Dist.] July 13, 2021, orig. proceeding) (mem. op., not designated for publication) (dismissing relator’s pro se petition for writ of mandamus where relator represented by counsel and not entitled to hybrid representation).³

Accordingly, we dismiss Roberts’ pro se petition for writ of mandamus for lack of jurisdiction. All pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Kelly, Hightower, and Farris.

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

³ Alternatively, assuming we could exercise jurisdiction over Roberts’ pro se petition for writ of mandamus, his petition would be denied for failure to comply with the requirements of Texas Rule of Appellate Procedure 52. *See* TEX. R. APP. P. 52.3 (listing required contents of mandamus petition), 52.7 (relator required to file record with mandamus petition), 52.8; *see also Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (relator must provide mandamus record sufficient to establish right to mandamus relief).