

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
January 19, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-17-00014-CR

NO. 14-17-00015-CR

NO. 14-17-00016-CR

IN RE MICHAEL DAVIS, Relator

ORIGINAL PROCEEDING

WRIT OF MANDAMUS

228th District Court

Harris County, Texas

Trial Court Cause No. 331288, 331289, and 331549

MEMORANDUM OPINION

On January 6, 2017, relator Michael Davis filed a petition for writ of mandamus in this Court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this Court to compel the Honorable Marc Carter, presiding judge of the 228th District Court of Harris County, to rule on relator's Motion for Order to Transcribe the Proceedings, in which he requests the trial court to order the Harris County District Clerk to (1) provide relator with a free copy of the complete trial record, and (2) in the event any part of the

proceedings were not transcribed, to order the court reporter to transcribe them and provide a free copy of them to relator.

A trial court is required to consider and rule upon a motion within a reasonable time. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992) (orig. proceeding); *In re Querishi*, 14-15-00232-CV, 2015 WL 1456150, at *1 (Tex. App.—Houston [14th Dist.] Mar. 26, 2015, orig. proceeding). “When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act.” *Barnes*, 832 S.W.2d at 426; *see also Eli Lilly and Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (trial court abused its discretion by refusing to conduct hearing and render decision on motion).

However, relator must show that the motion was filed and that he presented it to the trial court for a ruling. *See In re Clewis*, 14-10-00086-CV, 2010 WL 547087, at *1 n.3 (Tex. App.—Houston [14th Dist.] Feb. 18, 2010, orig. proceeding). And, as the party seeking relief, relator has the burden of providing this court with a sufficient record to establish his right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); Tex. R. App. P. 52.7(a)(1).

Attached to relator’s petition as exhibits are (1) a copy of the trial court’s order granting relator a free copy of the Clerk’s File, (2) a copy of a letter dated February 2, 2016, to the District Clerk stating that relator received a partial record, but that certain documents are missing, (3) a copy of a letter dated March 3, 2016, to the District Clerk referencing relator’s February 2, 2016, letter and asking that the District Clerk immediately send relator the entire record, (4) a Memorandum Response from the District Clerk regarding correspondence from relator received on September 28, 2016, and (5) Defendant’s Motion for Order to Transcribe the

Proceedings. However, none of the exhibits are certified or sworn to, as required by Rule of Appellate Procedure 52.7(a)(1). *See* Tex. R. App. P. 52.7(a)(1).

Further, Rule of Appellate Procedure 52.3(j) provides that “[t]he person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.” *See* Tex. R. App. P. 52.3(j). Relator’s petition does not contain that certification.

That relator may be an inmate acting pro se does not relieve him from the duty to comply with the rules of procedure. *See Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 185 (Tex. 1978). “Pro se litigants must comply with the applicable procedural rules, and we hold them to the same standards that apply to licensed attorneys.” *Williams v. Bayview-Realty Assocs.*, 420 S.W.3d 358, 362 n.2 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

Accordingly, we deny relator’s petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Boyce, Busby, and Wise.
Do Not Publish — Tex. R. App. P. 47.2(b).