

Motion for Rehearing Denied as Moot; Petition for Writ of Mandamus Denied; Memorandum Opinion of May 18, 2017 Withdrawn, and Substitute Memorandum Opinion filed October 5, 2017.



In The

Fourteenth Court of Appeals

NO. 14-17-00335-CR

IN RE JAMES THOMAS GREEN, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
248th District Court
Harris County, Texas
Trial Court Cause No. 715266**

SUBSTITUTE MEMORANDUM O P I N I O N

We withdraw our memorandum opinion of May 18, 2017, and issue this substitute memorandum opinion.

Relator James Thomas Green asks this court to grant mandamus relief compelling the Honorable Katherine Cabaniss, presiding judge of the 248th District Court of Harris County, to rule on (1) relator's "Petition for Declaratory Judgment and/or for Mandamus Relief," (2) relator's "Motion for Leave to Proceed *In Forma Pauperis*," and (3) relator's "Motion for Appointment of Counsel."

To obtain mandamus relief in a criminal case, a relator must demonstrate that relator does not have an adequate remedy at law to redress an alleged harm and that the act relator seeks to compel is ministerial, that is not involving a discretionary or judicial decision. *See State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). It is relator's burden to provide the Court with a sufficient record to establish the right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); Tex. R. App. P. 52.3(k), 52.7(a).

Although relator purports to have filed a civil claim for declaratory judgment, he did not follow the proper procedures for doing so. Nor has he shown that he filed these documents in any pending case. Because relator has not shown that he properly filed these documents in a criminal case (the documents are marked received not filed, and he did not designate them as being filed in any pending case), the felony post-conviction bar does not apply to deprive this court of jurisdiction. But relator has not shown that the respondent abused her discretion by failing to rule on the requests in these documents because the record does not show that they have been filed in any case pending before the respondent.

Relator has not established his right to mandamus relief. Accordingly, we deny relator's petition for writ of mandamus.

Relator's motion for rehearing is denied as moot.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Donovan and Wise.
Do Not Publish — Tex. R. App. P. 47.2(b).