

Petition for Writ of Mandamus Denied and Memorandum Opinion filed July 17, 2018.



In The

Fourteenth Court of Appeals

NO. 14-17-00506-CR and NO. 14-17-00507-CR

IN RE DARRYL GREGORY GUILLORY, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
230th District Court
Harris County, Texas
Trial Court Cause Nos. 1354360 and 1354361**

MEMORANDUM OPINION

On June 20, 2018, relator Darryl Gregory Guillory 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 Brad Hart, presiding judge of the 230th District Court of Harris County, to provide

him with a free copy of the appellate record so that he may prepare a post-conviction writ of habeas corpus.

An indigent criminal defendant is not entitled to obtain a free record to assist in preparation of a petition for writ of habeas corpus absent a showing that the habeas corpus action is not frivolous and there is a specific need for the record sought. *Escobar v. State*, 880 S.W.2d 782, 783 (Tex. App.—Houston [1st Dist.] 1993, no pet.); *see also Nabelek v. Bradford*, 228 S.W.3d 715, 719 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (rejecting constitutional challenge to restriction of prisoner’s right to obtain trial documents to support a habeas petition). To obtain a free record for use in a habeas proceeding, a relator must show that the habeas action is not frivolous by making a specific showing of the issues to be raised in the habeas proceeding and a specific need for the record to demonstrate the right to habeas relief, including demonstrating the petitioner’s inability to pay for a record. *See In re Coronado*, 980 S.W.2d 691, 693 (Tex. App.—San Antonio 1998, orig. proceeding); *Eubanks v. Mullin*, 909 S.W.2d 574, 576–77 (Tex. App.—Fort Worth 1995, orig. proceeding).

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) (orig. proceeding); Tex. R. App. P. 52.7(a)(1) (relator must file with 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”).

A “party’s right to mandamus relief generally requires a predicate request for some action and a refusal of that request.” *In re Perritt*, 992 S.W.2d 444, 446 (Tex. 1999) (orig. proceeding). “But, the requirement that there be a predicate request and adverse ruling is excused when such a request would have been futile and the trial court’s refusal little more than a formality.” *In re Le*, 335 S.W.3d 808, 814 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding).

Although a trial court is required to rule on a motion within a reasonable time after the motion has been submitted to the court, to be entitled to mandamus relief, the petitioner must present a record showing both that the motion was filed and that it was brought to the attention of the trial court; it is not enough that the motion is on file. *See In re Foster*, 503 S.W.3d 606 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding); *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding). The district clerk’s receipt of a motion “does not establish that the motion was brought to the attention of the trial court because the clerk’s knowledge of the motion is not imputed to the trial court.” *In re Layton*, 257 S.W.3d at 795. “Presenting the motion, along with a request for a hearing, is required to let the court know that the defendant wants the trial court to act on the motion and whether the defendant would like a hearing on the motion.” *Rozell v. State*, 176 S.W.3d 228, 230 (Tex. Crim. App. 2005).

Attached to relator’s petition is a document with a file stamp indicating that it was filed on August 24, 2017. In this document relator requests the clerk of the 230th District Court to provide relator with certain documents and evidence from his trial. This document does not request any relief from the respondent trial judge. Nor does

this document show that the habeas action that relator intends to file is not frivolous and that he has a specific need for record sought. *See Escobar*, 880 S.W.2d at 783. Relator is not entitled to mandamus relief because he has not provided this court with a certified or sworn record that shows that he requested the trial judge to provide him with a free record, that he brought the request to the attention of the trial judge for a ruling, and that the trial judge has refused the request.

For these reasons, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justices Frost and Justices Donovan and Brown.
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