

**Petition for Writ of Mandamus Denied and Memorandum Majority and
Dissenting Opinions filed November 16, 2021.**



In The

Fourteenth Court of Appeals

NO. 14-21-00608-CR

IN RE CLINTON LEWIS DANIELS II, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
405th District Court
Galveston County, Texas
Trial Court Cause No. 20CR1464**

MEMORANDUM DISSENTING OPINION

I dissent because relator does not comply with the following mandatory provisions of Rule 52 regarding a proper original-proceeding record: Tex. R. App. P. 52.3(j) (certification), (k)(1) (necessary contents of appendix); 52.7(a)(1) (sworn or certified copies), (a)(2) (properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or statement that no testimony was adduced in connection with the matter

complained); *see also* Tex. Civ. Prac. & Rem. Code Ann. § 132.001 (unsworn declarations).

Generally, I would give notice of the deficiencies with the record and allow relator an opportunity to cure, and if relator did not timely cure the deficiencies, then I would dismiss the petition for want of prosecution without reaching the merits. *See In re Kholaiif*, 624 S.W.3d 228, 231 (order), *mand. dismiss'd*, 615 S.W.3d 369 (Tex. App.—Houston [14th Dist.] 2020) (orig. proceeding). Here, however, based on the arguments asserted, the deficiencies in relator’s petition are incurable. Accordingly, I would dismiss the petition without allowing an opportunity to cure.¹

I respectfully dissent.

/s/ Charles A. Spain
Justice

Panel consists of Justices Jewell, Spain, and Wilson (Wilson, J., majority).

Do Not Publish — Tex. R. App. P. 47.2(b).

¹ While I disagree with the disposition of this case, I applaud the court for deciding the case for reasons other than petitioner’s purported noncompliance with judicially-created “extra rules” concerning presentment of motions by incarcerated persons. *See In re Gomez*, 602 S.W.3d 71, 74–75 (Tex. App.—Houston [14th Dist.] 2019) (orig. proceeding) (Spain, J., concurring); *In re Pete*, 589 S.W.3d 320, 322–324 (Tex. App.—Houston [14th Dist.] 2019) (orig. proceeding) (Spain, J., concurring).