COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00409-CV

EX PARTE G.W.

FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. D213-E-12415-16

MEMORANDUM OPINION[1]

Pro se appellant G.W. appeals the trial court's judgment denying his petition for expunction. In a brief in which he does not cite any authority, he argues that the trial court "failed to recognize [his] motion to bench warrant" and that, consequently, the trial court erroneously denied his petition for expunction. We disagree and affirm the trial court's judgment.

[1]*See* Tex. R. App. P. 47.4.

Background Facts

Appellant filed a pro se petition for expunction under chapter 55 of the code of criminal procedure.[2] His petition stated that he was currently incarcerated and was serving a lengthy sentence. He pled that he was seeking to expunge "all juvenile charges," a "charge[] of aggravated assault with a deadly weapon" for which he was "no-billed" in January 2006, and "all other felonies and tickets from [his] records" in hopes of bettering his future chances of parole and employment. He asked the trial court to set his petition for a hearing.

The same day, along with his petition, appellant filed a motion for a bench warrant in which he explained that he would otherwise be unable to appear before the court. The record does not contain a ruling on the motion for a bench warrant, nor does the record indicate the trial court's awareness of that motion. The State filed an answer to generally deny the allegations in the petition.

The trial court held a hearing on the expunction petition, and appellant did not appear.[3] Two weeks after the hearing, the trial court signed a final judgment denying the petition. The court recited that appellant had not appeared at the

[2]*See* Tex. Code Crim. Proc. Ann. arts. 55.01–.06 (West 2006 & Supp. 2016).

[3]The record in this appeal does not include a reporter's record. The clerk's record contains a certification of call that indicates that the trial court held a September 15, 2016 hearing on the petition and that appellant did not appear at the hearing. The trial court's judgment recites the same.

hearing and stated that "therefore," the court rendered judgment for the State. Appellant brought this appeal.

The Resolution of Appellant's Issue

In appellant's four-page, handwritten brief, he contends that the trial court erred by denying his expunction petition because of his failure to appear at a hearing without first recognizing his incarceration and ruling on his motion for a bench warrant. For two reasons, we conclude that we must overrule appellant's sole issue and affirm the trial court's judgment.

First, appellant cites no authority to support his argument. *See* Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."); *Sanders v. Future Com, Ltd.*, No. 02-15-00077-CV, 2017 WL 2180706, at *6 (Tex. App.—Fort Worth May 18, 2017, no pet.) (mem. op.) (holding that a party did not adequately brief an issue because the party did not cite relevant authority). In fact, he does not present an argument at all; the one-page substance of his brief contains only a summary of an argument along with a statement of the case, a statement of his issue, and a statement of facts. *See* Tex. R. App. P. 38.1(d), (f), (g), (h). Because appellant provides no authority supporting an argument and no argument, we overrule his issue as inadequately briefed. *See* Tex. R. App. P. 38.1(i); *Sanders*, 2017 WL 2180706, at *6; *Hornbuckle v. State Farm Ins.*, No. 02-15-00387-CV, 2016 WL 5957020, at *3 (Tex. App.—Fort Worth Oct. 13, 2016, no pet.) (mem. op.) ("The appellate court

has no duty to brief issues for an appellant. In the absence of appropriate record citations or a substantive analysis, a brief does not present an adequate appellate issue." (citation omitted)); *Yeldell v. Denton Cent. Appraisal Dist.*, No. 02-07-00313-CV, 2008 WL 4053014, at *2 (Tex. App.—Fort Worth Aug. 29, 2008, pet. denied) (mem. op.) ("Bare assertions of error, without citations to authority, waive error."); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994) (reciting the "long-standing rule that a point may be waived due to inadequate briefing").

Second, assuming, without deciding, that the trial court improperly predicated its denial of the expunction petition on appellant's failure to appear when he had requested a bench warrant and when the trial court had not ruled on that request, we must nonetheless affirm the trial court's judgment. No judgment may be reversed on appeal because the trial court made an error of law unless the error probably caused the rendition of an improper judgment or probably prevented appellant from properly presenting the case to this court. *See* Tex. R. App. P. 44.1(a).

The right to an expunction is neither a constitutional nor common law right; rather, it is a statutory privilege on which the petitioner bears the burdens of proper pleading and proof. *McCarroll v. Tex. Dep't of Pub. Safety*, 86 S.W.3d 376, 378 (Tex. App.—Fort Worth 2002, no pet.). A trial court may rule on an expunction petition without conducting a formal hearing and without considering live testimony "if it has at its disposal all the information it needs to resolve the

issues raised by the petition. Presumably, that information might be available by what is in the pleadings, by summary judgment proof, or by judicially noticing court records." *Ex parte Wilson*, 224 S.W.3d 860, 863 (Tex. App.—Texarkana 2007, no pet.) (citation omitted); *see Sepeda v. State*, No. 14-15-00790-CV, 2016 WL 6561473, at *5 (Tex. App.—Houston [14th Dist.] Nov. 3, 2016, no pet.) (mem. op.) ("The trial court could have concluded Sepeda had not filed an expunction petition satisfying the statutory requirements of article 55.01, and therefore the only hearing required under this circumstance was the trial court's review of Sepeda's pleadings.").

In *McCarroll*, like in this case, McCarroll had filed a motion for a bench warrant, and without ruling on that motion, the trial court had held a hearing on the expunction petition without McCarroll's presence and had denied the petition. 86 S.W.3d at 378. On appeal, McCarroll argued that the trial court had violated his due process and equal protection rights by conducting the hearing without his presence. *Id.* at 377. Relying on rule 44.1, we held that any error from the trial court's conducting a hearing on the expunction petition without McCarroll's presence was harmless because of "the improbability of appellant's success on the merits." *Id.* at 378.

We reach the same result here. Article 55.01 of the code of criminal procedure provides a statutory right to expunge criminal records under carefully-defined conditions. Tex. Code Crim. Proc. Ann. art. 55.01; *State v. N.R.J.*, 453 S.W.3d 76, 79 (Tex. App.—Fort Worth 2014, pet. denied) ("[T]he petitioner bears

the burden of demonstrating that each of the required statutory conditions [has] been met."). Article 55.01 states in part:

> (a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:
>
> (1) the person is tried for the offense for which the person was arrested and is:
>
> (A) acquitted by the trial court, except as provided by Subsection (c); or
>
> (B) convicted and subsequently:
>
> (i) pardoned for a reason other than that described by Subparagraph (ii); or
>
> (ii) pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or
>
> (2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending . . . .

Tex. Code Crim. Proc. Ann. art. 55.01(a)(1)–(2). Under this statute, an expunction is not available when the petitioner has been convicted, the conviction is final, and the conviction has not been overturned or affected by a pardon. *See id.* arts. 55.01(a)(1)–(2), (b)(1), 55.02 § 1a(a) (explaining that the "trial court presiding over a case in which a defendant is convicted *and subsequently granted relief or pardoned on the basis of actual innocence* . . . shall enter an order of expunction" (emphasis added)); *see also S.J. v. State*, 438

S.W.3d 838, 841 (Tex. App.—Fort Worth 2014, no pet.) ("The traditional and primary purpose of the expunction statute is to remove records of wrongful arrests.").

Here, in his expunction petition, appellant stated that in 2008, he was "sentenced to 22 1/2 years and 22 1/2 years to be [run concurrently] in TDCJ." He did not specify the offenses that resulted in the convictions, provide any cause numbers with which to locate those offenses, or provide arrest data related to those offenses. He mentioned being "no-billed" for charges of aggravated assault with a deadly weapon in January 2006 but did not explain whether the 2008 convictions arose from that arrest. If the 2008 convictions did arise from the aggravated assault arrests, the trial court would be statutorily prohibited from granting an expunction. *See* Tex. Code Crim. Proc. Ann. art. 55.01(c). Also, appellant pled for expunction of records related to "all . . . felonies," and given that he is currently serving concurrent sentences for two felonies, he is not entitled to that relief. He also pled for expunctions related to juvenile charges but did not identify any such charges or explain why records related to those charges were subject to expunction. In sum, appellant did not plead how or why he was entitled to expunction under any ground contained in article 55.01.

Moreover, appellant failed to plead the statutory requirements for an expunction petition, including his driver's license number, his social security number, his address at the time of his arrests, the offenses charged against him, the dates of offenses charged against him, his arrest dates, the name of

agencies that arrested him, and his case numbers. *See id.* art. 55.02, § 2(b). He did not include this required information or explain why he failed to do so. *See id.*

Thus, because appellant did not plead adequate legal grounds for an expunction or provide statutorily-required factual information, we conclude that there was an "improbability of appellant's success on the merits" and that any error in the reasoning of the trial court's judgment is not reversible. *See* Tex. R. App P. 44.1(a); *McCarroll*, 86 S.W.3d at 378; *see also Tex. Workers' Comp. Comm'n v. Wausau Underwriters Ins.*, 127 S.W.3d 50, 58 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) ("A trial court does not err if it makes the correct ruling for the wrong reason.").

For the reasons stated above, we overrule appellant's only issue.

Conclusion

Having overruled appellant's sole issue, we affirm the trial court's judgment denying his petition for expunction.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; KERR and PITTMAN, JJ.

DELIVERED: August 24, 2017