

NO. 07-11-0147-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL E
SEPTEMBER 9, 2011

JACK E. WHITNEY,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 147TH DISTRICT COURT OF TRAVIS COUNTY;
NO. 96256-A; HONORABLE CLIFFORD BROWN, PRESIDING

Memorandum Opinion

Before QUINN, C.J., CAMPBELL, J., and BOYD, S.J.¹

Jack E. Whitney (appellant) appeals the denial of his petition for a writ of habeas corpus. Through that petition, he sought to credit the time spent on parole against his sentence once he was returned to prison. We affirm.

First, we note that we have jurisdiction to review the decision of the trial court in denying habeas corpus relief. TEX. R. APP. P. 31.1; *Ex parte Dixon*, 964 S.W.2d 719,

¹John T. Boyd, Senior Justice retired, sitting by assignment.

722 (Tex. App.—Fort Worth 1998, pet. ref'd). Second, an appellant bears the burden of proof at the habeas proceeding, *Ex parte Kimes*, 872 S.W.2d 700, 703 (Tex. Crim. App. 1993), and the burden to establish error on appeal. Third, claims regarding the reduction of a sentence through the application of credit are cognizable via a writ of habeas corpus. *Ex parte Evans*, 964 S.W.2d 643, 645 (Tex. Crim. App. 1998).² Fourth, the record must enable both the trial and appellate court to calculate the amount of credit purportedly due before either can uphold the claim. Fifth, the trial court found that appellant did “not allege when he was released on parole or when the parole violator warrant was issued.” Sixth, appellant does not attack this finding on appeal or cite us to anything in the appellate record specifying when he was released on parole or when the parole warrant was issued.³ Seventh, without such factual information, one cannot determine the amount of supposed “street time” allegedly accrued while on parole.

We overrule his sole issue and affirm the decision to deny the writ of habeas corpus.

Per Curiam

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²The Legislature has decided that inmates seeking time credit relief in a writ application filed after January 1, 2000, must first exhaust administrative remedies by complying with §501.0081 of the Texas Government Code. TEX. GOV'T CODE ANN. §501.0081 (Vernon 2004). Appellant has stated in his application that he has complied with the statute even though there is no other supporting documentation for same. *Ex parte Wright*, No. WR-64651-01, 2006 WL 1630494, at *1 (Tex. Crim. App. June 14, 2006) (not designated for publication).

³To the extent that he may mention those dates in his brief, we must ignore them for factual allegations mentioned for the first time in a brief are not part of the record. See *Miracle v. State*, 604 S.W.2d 120, 123 (Tex. Crim. App. 1990). Furthermore, we assess the accuracy of the trial court's findings based solely on the factual record before the trial court. *Ex parte Dixon*, 964 S.W.2d 719, 722 (Tex. App.—Fort Worth 1998, pet. ref'd).