In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00274-CR

IN RE ROYAL EDWARD WILLARD, RELATOR

OPINION ON ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

August 3, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Relator, Royal Edward Willard, has filed a second petition for writ of mandamus requesting this Court to instruct the Honorable Felix Klein, presiding judge of the 154th District Court of Lamb County (the trial court), to disclose any *Brady* evidence contained in the personnel files of Pedro 'Pete' Lara, including all information that may be used as impeachment against this witness. We again deny the petition.

As stated by our Court of Criminal Appeals:

> The traditional test for determining whether mandamus or prohibition relief is appropriate requires the relator to establish two things. First, he must show that he has no adequate remedy at law to redress the harm that he alleges will ensue if the act he wishes to prohibit is carried out. Second, he must show that the act he seeks to compel or prohibit does not involve a discretionary or judicial decision. *If the relator fails to satisfy either aspect of this two-part test, then relief should be denied.* As to the latter requirement, we have said that it is satisfied if the relator can show he has

> 'a *clear* right to the relief sought' -- that is to say, 'when the facts and circumstances dictate but one rational decision' under unequivocal, well-settled (*i.e*., from extant statutory, constitutional, or case law sources), and clearly controlling legal principles.

Simon v. Levario, 306 S.W.3d 318, 320 (Tex. Crim. App. 2009) *quoting, State ex rel Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207 (Tex. Crim. App. 2007) (emphasis added); *accord, In re Medina*, 475 S.W.3d 291, 297-98 (Tex. Crim. App. 2015) (stating the same and applying the requirements to both an application for writ of mandamus and for prohibition). Willard, via his petition for writ of mandamus, addresses only one of the two requirements specified in *Simon*. He says nothing in his application about the element pertaining to the absence of an adequate legal remedy. Thus, he has not carried his burden to satisfy both prongs of the two-part test, and, according to *Simon*, that obligates us to deny his petition.

Furthermore, a writ of mandamus generally serves to nullify an act already performed by the respondent. *In re Medina*, 475 S.W.3d at 297-98. Or it may be used to compel the respondent to perform a ministerial act. *In re Bonilla*, 424 S.W.3d 528, 533 (Tex. Crim. App. 2014). The "act" about which Willard complains is disclosed in his petition. Through it, he ". . . requests this Honorable Court [to] issue a writ of mandamus instructing [the trial court] to disclose any and all of the contents of Pedro 'Pete' Lara's personnel (hereinafter '(g) file') maintained by the City of Lubbock that contains '*Brady* evidence.'" In other words, Willard wants us to tell the trial court to disclose *Brady* material contained in Lara's personnel file. Yet, we do not see where in the record before us that the trial court refused to do that.

After initially disclosing three items in Lara's personnel file, the trial judge undertook an *in camera* inspection of the materials in question, *as requested by both*

the State and Willard. Indeed, Willard informed the trial court that ". . . the defense is okay with the Court taking an in camera view of the documents and letting us know what the court is releasing [sic] to being produced." Again, the trial court acceded and found nothing that needed to be disclosed; it found nothing in the personnel file of Lara "relevant to any matters before this court." The trial court also invited the State and Willard to inform it of specific items in the file that either may think exists and it would reconsider its decision to restrict disclosure to three items already disclosed. In other words, the trial court has attempted to comply with Willard's request and apparently found no potential *Brady* material that it refused to disclose. Nor has Willard cited us to any *Brady* material that the trial court refused to disclose. Simply put, Willard has not shown that the trial court refused to do that which he wants us to order the trial court to do, *i.e*. disclose *Brady* material contained in Lara's personnel file.

For the foregoing reasons, Willard's second petition for writ of mandamus is denied.

Per Curiam

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