



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00084-CV

IN RE EDRICK JAMAR DUNN, RELATOR

Original Proceeding
Arising From Proceedings Before the 140th District Court
Lubbock County, Texas
Trial Court No. 2011-432,529; Honorable Jim Bob Darnell, Presiding

April 10, 2017

MEMORANDUM OPINION

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

Proceeding *pro se* and *in forma pauperis*, Relator, Edrick Jamar Dunn, seeks a writ of mandamus to compel the Honorable Jim Bob Darnell to recuse himself from presiding over an unidentified post-conviction application for writ of habeas corpus. Simultaneously with his request for mandamus relief, Relator has filed an “Emergency Motion to Stay of Plaintiffs [sic] 11.07 in District Court, Lubbock County, Texas.” For reasons expressed herein, we moot Relator’s emergency motion and deny his petition for writ of mandamus.

MANDAMUS STANDARD OF REVIEW

Mandamus relief is extraordinary. *In re Braswell*, 310 S.W.3d 165, 166 (Tex. App.—Amarillo 2010, orig. proceeding) (citing *In re Southwestern Bell Telephone Co., L.P.*, 235 S.W.3d 619, 623 (Tex. 2007) (orig. proceeding)). Mandamus issues only to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no other adequate remedy by law. *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding) (quoting *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (orig. proceeding)). To show entitlement to mandamus relief, a relator must satisfy three requirements: (1) a legal duty to perform; (2) a demand for performance; and (3) a refusal to act. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979).

APPLICABLE LAW

Rule 18a of the Texas Rules of Civil Procedure governs the procedure for recusal of a trial judge *in a case* in any trial court other than a statutory probate court or justice court. TEX. R. CIV. P. 18a(a). (Emphasis added). Under Rule 18a(f), regardless of whether a motion to recuse complies with the rule, the respondent judge has only two options regarding a pending motion. The judge must either (1) sign and file with the clerk an order of recusal or (2) sign and file with the clerk an order referring the motion to the regional presiding judge. *See id.* at (f)(1).¹ *See also Greenberg, Benson, Fisk & Fielder, P.C. v. Howell*, 685 S.W.2d 694, 695 (Tex. App.—Dallas 1984, orig. proceeding). The rule does not authorize *denial* of a motion to recuse by the respondent judge.

¹ A regional presiding judge may summarily deny a motion to recuse that does not comply with the rule. *See* TEX. R. CIV. P. 18a(f)(3).

The requirements of Rule 18a are mandatory. A trial judge abuses his discretion as a matter of law when he pursues an option other than the two available in Rule 18a(f)(1). *Lamberti v. Tschoepe*, 776 S.W.2d 651, 652 (Tex. App.—Dallas 1989, writ denied).

ANALYSIS

With his petition for mandamus relief, Relator included a copy of his motion to recuse and a copy of the trial court's order denying that motion. TEX. R. APP. P. 52.3(k)(1)(A). Both the motion to recuse and the order denying that motion bear the cause number of Relator's original conviction, not a post-conviction habeas corpus proceeding. Relator correctly presents the law applicable to recusal motions and the law applicable for entitlement to mandamus relief; however, he has not provided a sufficient record to show he is entitled to issuance of a writ of mandamus in this case. See *Lizcano v. Chatham*, 416 S.W.3d 862, 863 (Tex. Crim. App. 2011) (orig. proceeding) (Alcala, J. concurring). See also *Walker*, 827 S.W.2d at 837. Specifically, he has not shown that his motion to recuse was filed in a pending case.

Relator alleges the trial judge is "biased and will not make a fair and impartial decision in his recommendation on Relator's 11.07." As previously noted, Rule 18a(a) applies *in a case* in any trial court other than a statutory probate court or justice court. (Emphasis added). The record before us does not indicate that Relator's motion was filed in a *pending case*, to-wit: the post-conviction application for writ of habeas corpus alluded to in his motion. A trial judge must have "a case" pending in his court before a party may move to have that judge recused. In the absence of a pending case properly invoking the jurisdiction of the trial court, the court is without the authority to either (1)

sign and file with the clerk an order of recusal or (2) sign and file with the clerk an order referring the motion to the regional presiding judge. Although we are not unsympathetic to the plight of an inmate's *pro se* status, it does not exempt him from complying with all applicable rules of procedure. See *Pena v. McDowell*, 201 S.W.3d 665, 667 (Tex. 2006); *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978).

Because Relator has failed to establish a “case” pending before the trial court, the appropriate disposition would have been to *dismiss* Relator's motion to recuse for want of jurisdiction rather than to *deny* it. Although not specifically designated as a *dismissal* for want of jurisdiction, we hold the trial court did not reversibly err in denying Relator's motion to recuse for want of jurisdiction.²

CONCLUSION

Without a sufficient record, we moot Relator's “Emergency Motion to Stay of Plaintiffs [sic] 11.07 in District Court, Lubbock County, Texas” and deny his petition for writ of mandamus.

Patrick A. Pirtle
Justice

² We construe the order denying the motion to recuse as an order dismissing the motion for want of jurisdiction. Our disposition does not preclude the refiling of a motion to recuse should the jurisdiction of the trial court be properly invoked by the filing of an application for habeas corpus.