



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

No. 07-18-00420-CV

IN RE DAVID WAYNE KERR, RELATOR

Original Proceeding
Arising From Proceedings Before the 181st District Court
Randall County, Texas
Trial Court No. 21,768-B; Honorable John B. Board, Presiding

January 11, 2019

MEMORANDUM OPINION

Before CAMPBELL and PIRTLE and PARKER, JJ.

On November 26, 2018, David Wayne Kerr, a Texas inmate proceeding *pro se*, filed a petition for writ of mandamus seeking to compel the district clerk to transmit a copy of his application for writ of habeas corpus to the Court of Criminal Appeals. By letter on November 28, this court advised Kerr that the required filing fee of \$155 did not accompany the filing of his petition. We directed him to pay the required filing fee or, in lieu thereof, to comply with chapter 14 of the Texas Civil Practice and Remedies Code by

filings a statement of inability to afford payment of court costs, a separate affidavit relating to previous filings, and a certified copy of his inmate trust account statement. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.002(a), 14.004 (West 2017). We further advised that if he did not comply by December 10, this proceeding was subject to dismissal without further notice.

On December 12, we granted Kerr an extension to January 9, 2019, to file a response. On December 31, Kerr filed a letter with this court stating that he wished to withdraw his petition for writ of mandamus. We have received no other response from Kerr.

Unless a party is excused from paying a filing fee, the clerk of this court is required to collect filing fees set by statute or the Supreme Court when an item is presented for filing. See TEX. R. APP. P. 5, 12.1(b). An inmate who files an affidavit or declaration of inability to pay costs in an appeal or original proceeding must also comply with chapter 14 of the Texas Civil Practice and Remedies Code. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a). An inmate's failure to comply with chapter 14 is grounds for dismissal of the appeal or original proceeding. See *In re Johnson*, No. 07-16-00354-CV, 2016 Tex. App. LEXIS 11841, at *2 (Tex. App.—Amarillo Nov. 1, 2016, orig. proceeding) (per curiam) (mem. op.) (dismissing inmate's petition for writ of mandamus for failure to pay the filing fee or submit the materials required to proceed under chapter 14).

Because Kerr has failed to pay the filing fee or comply with chapter 14 of the Texas Civil Practice and Remedies Code within the time provided by this court for compliance,

we dismiss this original proceeding. Accordingly, Kerr's motion to withdraw his petition is rendered moot.

Per Curiam