



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-08-00091-CV

IN RE:
MICHAEL DEAN PERRY

Original Mandamus Proceeding

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

Relator, Michael Dean Perry, was convicted February 26, 2008, of the offense of tampering with evidence. *See* TEX. PENAL CODE ANN. § 37.09 (Vernon Supp. 2008). Due to enhancements, he was sentenced to twenty-five years' incarceration. The trial court appointed counsel to represent Perry on appeal; pursuant to the various pertinent Texas Rules of Appellate Procedure, the clerk's and reporter's records have been filed with this Court, and Perry's appellate brief was initially due with this Court on August 25, 2008. *See generally* TEX. R. APP. P. 34.5, 34.6, 35.2. A motion for extension of time to file that brief is currently pending before the Court.

Notwithstanding that Perry has appointed counsel, four days before his brief was due, he filed a petition with this Court seeking mandamus relief. Perry would have us: 1) order the Gregg County District Clerk and trial court reporter to provide Perry with a copy of the appellate record; and 2) order Perry's appointed counsel, Tim Cone, to visit Perry in prison on or before August 25.

Our power to issue a writ of mandamus does not extend to the district clerk unless the relator establishes that the writ must issue to enforce our jurisdiction. *See* TEX. GOV'T CODE ANN. § 22.221 (Vernon 2004); *In re Simpson*, 997 S.W.2d 939 (Tex. App.—Waco 1999, orig. proceeding). The courts of appeals have the obligation to ensure records are timely filed and may enter orders to accomplish that end as authorized by the Texas Rules of Appellate Procedure.¹

¹*See* TEX. R. APP. P. 35.3(e).

Likewise, based on the appellate rules, we may issue orders to ensure that attorneys file required documents,² but we do not have mandamus authority to require the relief Perry has requested. As stated above, this Court is in receipt of both the clerk's and reporter's records in this case. And nothing indicates counsel is not in the process of drafting an appellate brief in this matter.

Perry has failed to state any claim which could support mandamus relief. We deny his petition.

Jack Carter
Justice

Date Submitted: September 3, 2008
Date Decided: September 4, 2008

²See TEX. R. APP. P. 38.8(2), (4).