



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

---

No. 06-10-00031-CV

---

IN RE: WENDELL WATSON

---

---

Original Mandamus Proceeding

---

---

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

## MEMORANDUM OPINION

Wendell Watson has filed a second petition seeking a writ of mandamus against the judge of the 123rd Judicial District Court of Panola County. In this petition, he lists a number of complaints and asks this Court to take various actions based on those complaints. He specifically complains because the trial judge refused to make a written ruling commemorating his verbal denial of Watson's motion to correct the record nunc pro tunc, and argues that he is entitled to a mandamus compelling the judge to reduce his ruling to writing.

There are a number of cases authorizing the use of a mandamus proceeding to obtain a ruling based on the general concept that a trial judge must consider and rule on a motion brought to the court's attention within a reasonable amount of time. *In re Blakeney*, 254 S.W.3d 659, 662 (Tex. App.—Texarkana 2008, orig. proceeding); *In re Bonds*, 57 S.W.3d 456, 457 (Tex. App.—San Antonio 2001, orig. proceeding). Further, in some circumstances, a mandamus is available to address a trial judge's ruling on a motion for entry of a judgment nunc pro tunc. *In re Bridges*, 28 S.W.3d 191, 195 (Tex. App.—Fort Worth 2000, orig. proceeding).

A nunc pro tunc order is used by a court to make its records speak the truth by correcting the judgment at a later date to reflect what actually occurred at trial. *Ex parte Dickerson*, 702 S.W.2d 657, 658 (Tex. Crim. App. 1986). Nunc pro tunc orders may be used only to correct clerical errors in judgments in which no judicial reasoning contributed to their entry, and for some

reason were not entered of record at the proper time. *Escobar v. Escobar*, 711 S.W.2d 230, 231 (Tex. 1986); *State v. Bates*, 889 S.W.2d 306, 309 (Tex. Crim. App. 1994).

There is no recognition either in the cases or in the rules for the concept of a motion or an order by the trial judge to correct an appellate record “nunc pro tunc,” as opposed to an order entered by the judge to correct its own judgment. TEX. R. CIV. P. 316. Further, Rule 316 of the Texas Rules of Civil Procedure, allowing for the correction of clerical mistakes in the record of any judgment (nunc pro tunc), applies only to final judgments. *In re Lausch*, 177 S.W.3d 144, 151 (Tex. App.—Houston [1st Dist.] 2005, orig. proceeding).

This, however, does not involve a request for a judgment nunc pro tunc. It instead seeks correction of alleged shortfalls in the appellate clerk’s record. Supplementation of an incomplete appellate record, or correction of an appellate record in which pages are omitted, is made through application of TEX. R. APP. P. 34.5(c)(1), (d), (h). The request made of the trial judge was not one contemplated or authorized by the rules, and we will therefore not conclude that he abused his discretion either by refusing to sign a written order thereon, or by verbally denying the motion.

Watson also complains in passing that the Panola County Law Library is not adequate to meet his needs. He has directed us to neither an authority requiring a particular level of library facility to be maintained by a county, nor is it apparent how a mandamus against the trial judge would be available for such a complaint.

Mandamus relief is appropriate only if the court clearly abused its discretion and the relator has no adequate remedy by appeal. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 259 (Tex. 2008) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). After reviewing the mandamus record and petition, we conclude that the relator failed to establish his entitlement to mandamus relief. Accordingly, we deny the petition for writ of mandamus.

Bailey C. Moseley  
Justice

Date Submitted: May 5, 2010  
Date Decided: May 6, 2010