



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

No. 06-16-00125-CR

IN RE: BRIAN KEITH MELTON

Original Mandamus Proceeding

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

MEMORANDUM OPINION

Pursuant to plea agreements, Brian Keith Melton pled guilty in July 2001 to two charges of burglary of a habitation in two separate cause numbers.¹ Melton agreed to a sentence of twenty years' incarceration on each charge, the sentences were to run concurrently, and he was to receive 258 days' time credit. In January 2003, in an effort to correct Melton's sentences to conform to the parties' agreements, the trial court entered nunc pro tunc judgments of conviction. After the trial court entered the nunc pro tunc judgments, Melton sought mandamus relief asking this Court to compel the trial court to vacate both judgments. *See In re Melton*, 478 S.W.3d 153, 154 (Tex. App.—Texarkana 2015, orig. proceeding). We conditionally granted Melton's petition for a writ of mandamus and directed the trial court to vacate the nunc pro tunc judgments and to reinstate the original judgments and sentences. *Id.* at 157. According to Melton, on December 1, 2015, the trial court complied with our instructions by vacating the judgments nunc pro tunc and reinstating the original sentences.

Melton has now filed a subsequent petition for a writ of mandamus asking this Court to determine whether the original judgments are void. There are generally three prerequisites for the issuance of a writ of mandamus by an appellate court: (1) the trial court must have a legal duty to perform a nondiscretionary act; (2) the relator must make a demand for performance; and (3) the trial court must refuse that request. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979). It is the relator's burden to provide this Court with a sufficient record to establish his right to mandamus

¹Melton was convicted in trial court cause numbers 20,570 and 20,572.

relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); *In re Pilgrim's Pride Corp.*, 187 S.W.3d 197, 198–99 (Tex. App.—Texarkana 2006, orig. proceeding); see TEX. R. APP. P. 52.3.

In his petition, Melton states, “Relator now requests mandamus relief from this Court, as the sentences are un-authorized by law and the plea agreement is not being fulfilled, both of which render these judgments as void. *Leaving the trial court with the ministerial duty to vacate them.*” (Emphasis added). Melton fails to show, however, that before filing his petition for a writ of mandamus with this Court, he sought relief from the trial court. Because the record does not contain a certified or sworn copy of the trial court order from which Melton seeks mandamus relief, we deny his petition for a writ of mandamus. See TEX. R. APP. P. 52.3.

We deny the petition.

Bailey C. Moseley
Justice

Date Submitted: July 18, 2016

Date Decided: July 19, 2016

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