

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-17-00358-CR**

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**Israel Cardosa-Reyna, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE COUNTY COURT AT LAW NO. 3 OF TRAVIS COUNTY  
NO. C-1-CR-15-215778, HONORABLE MICHAEL J. McCORMICK, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Israel Cardosa-Reyna was charged with prostitution. *See* Tex. Penal Code § 43.02(b). He filed an application for pretrial writ of habeas corpus challenging the constitutionality of section 43.02 of the Texas Penal Code. *See Ex parte Ellis*, 309 S.W.3d 71, 79 (Tex. Crim. App. 2010) (“Pretrial habeas can be used to bring a facial challenge to the constitutionality of the statute that defines the offense . . .”). The trial court denied Cardosa-Reyna’s application, and this appeal followed.

On appeal, the State argues that Cardosa-Reyna did not preserve his arguments for appellate review because he did not present them to the trial court with sufficient specificity to make the court aware of his complaint. *See* Tex. R. App. P. 33.1(a). We agree.

The entirety of the complaint found in Cardosa-Reyna’s pretrial habeas application is set out below:

The statute under which Applicant stands charged, Texas Penal Code, 43.02, prostitution is unconstitutional on its face.

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A. 43.02 of the Texas Penal Code violates the Applicant's Rights [sic] under the First Amendment of the United States Constitution because it prohibits the Applicant's right of freedom of speech and freedom of expression and therefore violates the Applicant's rights under the Fourteenth Amendment to the United States Constitution.

B. 43.02 of the Texas Penal Code violates the Applicant's right to privacy under the United States Constitution and therefore violates the Applicant's rights under the Fourteenth Amendment to the United States Constitution.

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Applicant prays that 43.02 of the Texas Penal Code be found unconstitutional and the information against the Applicant be dismissed and further prosecution against the Applicant barred.

The record before us does not indicate that Cardosa-Reyna filed a trial brief in support of his habeas application. Moreover, the court reporter has advised this Court that “[t]here was legal argument before the Court but not on record.”

Cardosa-Reyna has failed to meet his burden of preserving a record sufficient to show reversible error. *See Perez v. State*, 261 S.W.3d 760, 764 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd) (“An appellant has the burden to properly initiate the completion of a record sufficient to illustrate reversible error.”); *see also Ex parte McKeand*, 454 S.W.3d 52, 54 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (per curiam) (“In the absence of a reporter's record, an appellate court considering a habeas corpus application will presume that there was evidence to support the trial court's judgment.”). Cardosa-Reyna's habeas application presents only a bare-bones

and conclusory constitutional challenge. While it asserts that the prostitution statute violates Cardosa-Reyna’s “right of freedom of speech and freedom of expression” and “right to privacy,” it cites no authority, discusses no legal doctrines, and provides no argument specifying how the statute violates those rights. Without more in the record before us, we cannot conclude that the trial court abused its discretion in denying the habeas application.<sup>1</sup> Accordingly, we overrule Cardosa-Reyna’s appellate issues.

### CONCLUSION

We affirm the trial court’s order denying Cardosa-Reyna’s application for pretrial writ of habeas corpus.

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Scott K. Field, Justice

Before Justices Puryear, Field, and Bourland

Affirmed

Filed: October 4, 2017

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<sup>1</sup> Pretrial habeas is an extraordinary remedy, *see Ex parte Ellis*, 309 S.W.3d 71, 79 (Tex. Crim. App. 2010), and we will affirm a trial court’s ruling on a pretrial habeas application absent an abuse of discretion. *See Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006); *Dishman v. State*, No. 03-14-00114-CR, 2014 WL 4414824, at \*1 (Tex. App.—Austin Aug. 27, 2014, no pet.) (mem. op., not designated for publication) (“We review a trial court’s ruling on a habeas claim for abuse of discretion and, thus, will not disturb that ruling unless the trial court acted arbitrarily or unreasonably or without reference to any guiding rules or principles.”).