



NUMBER 13-16-00523-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE TRINIDAD G. PEREZ

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Garza, Perkes, and Longoria
Memorandum Opinion Per Curiam¹**

Relator Trinidad G. Perez filed a pro se petition for writ of mandamus in the above cause on October 3, 2016, seeking to compel the trial court to rule on his pending motion for a free copy of his trial record in order to pursue a post-conviction writ of habeas corpus.

To be entitled to mandamus relief, the relator must establish both that he has no adequate remedy at law to redress his alleged harm, and that what he seeks to compel is a purely ministerial act not involving a discretionary or judicial decision. *In re Harris*,

¹ See TEX. R. APP. P. 52.8(d) ("When denying relief, the court may hand down an opinion but is not required to do so."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

491 S.W.3d 332, 334 (Tex. Crim. App. 2016) (orig. proceeding); *In re McCann*, 422 S.W.3d 701, 704 (Tex. Crim. App. 2013) (orig. proceeding). If the relator fails to meet both of these requirements, then the petition for writ of mandamus should be denied. *State ex rel. Young v. Sixth Jud. Dist. Ct. of Apps. at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007).

It is the relator's burden to properly request and show entitlement to mandamus relief. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (“Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.”). In addition to other requirements, the relator must include a statement of facts supported by citations to “competent evidence included in the appendix or record,” and must also provide “a clear and concise argument for the contentions made, with appropriate citations to authorities and to the appendix or record.” See *generally* TEX. R. APP. P. 52.3. The relator must furnish an appendix or record sufficient to support the claim for mandamus relief. See *id.* R. 52.3(k) (specifying the required contents for the appendix); R. 52.7(a) (specifying the required contents for the record).

We deny relator's petition for writ of mandamus. First, the petition for writ of mandamus fails to comply with the Texas Rules of Appellate Procedure. See *generally* TEX. R. APP. P. 52.3. In this regard, we note that the sole document that relator has filed as an appendix or record supporting his request for mandamus relief is a February 2, 2016 file-stamped copy of relator's “Motion for Court to Provide Copy or Access to the Statement of Facts and Trial Transcript and All Document[s] Filed in Order to Prepare Post Conviction Habeas Corpus.” Second, relator has not demonstrated that respondent

expressly refused to rule on relator's motion or that an unreasonable amount of time has passed since the motion was filed. See *In re Dimas*, 88 S.W.3d 349, 351 (Tex. App.—San Antonio 2002, orig. proceeding); *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding); accord *O'Connor v. First Ct. of Apps.*, 837 S.W.2d 94, 97 (Tex. 1992) (orig. proceeding). Third, as a general rule, an indigent criminal defendant is not entitled to a free transcription of prior proceedings for use in pursuing post-conviction habeas relief. *In re Trevino*, 79 S.W.3d 794, 796 (Tex. App.—Corpus Christi 2002, orig. proceeding); see *In re Coronado*, 980 S.W.2d 691, 693 (Tex. App.—San Antonio 1998, orig. proceeding) (requiring an indigent criminal defendant to show that the habeas corpus action is not frivolous and there is a specific need for the trial records which are sought); *Escobar v. State*, 880 S.W.2d 782, 783 (Tex. App.—Houston [1st Dist.] 1993, order); *Eubanks v. Mullin*, 909 S.W.2d 574, 576–77 (Tex. App.—Fort Worth 1995, orig. proceeding).

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that the relator has not met his burden to obtain mandamus relief. See *State ex rel. Young*, 236 S.W.3d at 210. Accordingly, relator's petition for writ of mandamus is denied. See TEX. R. APP. P. 52.8(a).

PER CURIAM

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
5th day of October, 2016.

