



**NUMBERS 13-16-00689-CR &
13-16-00690-CR**

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE BARRYON TOWNSEND

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

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

On December 19, 2016, relator Barryon Townsend, proceeding pro se, filed two petitions for writ of mandamus seeking to compel the trial court to grant his motions for nunc pro tunc judgment. The first petition arises from trial court cause number 89-CR-0945-H-(2) and is docketed in our Court as cause number 13-16-00689-CR, and the second petition arises from trial court cause number 90-CR-1948-H-(2) and is docketed

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. When granting relief, the court must hand down an opinion as in any other case.”); see *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

in our Court as cause number 13-16-00690-CR.² Because the pleadings in each of these original proceedings are virtually identical, we issue this consolidated opinion addressing them both in the interests of justice and efficiency.

To be entitled to mandamus relief, 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 ministerial act not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007). If relator fails to meet both of these requirements, then the petition for writ of mandamus should be denied. *See id.*

It is 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, 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. In this regard, it is clear that 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).

² These cases arise from the 347th District Court of Nueces County, Texas, and the respondent is the Honorable Missy Medary. *See* TEX. R. APP. P. 52.2.

The Court, having examined and fully considered the petitions for writ of mandamus, is of the opinion that relator has not met his burden to obtain relief. First, the petitions for writ of mandamus fail to comply with the Texas Rules of Appellate Procedure. See *generally* TEX. R. APP. P. 52.3. In addition to other deficiencies, relator has failed to file an appendix or record in support of his petitions. Second, relator has not demonstrated that the respondent expressly refused to rule on relator's motions or that an unreasonable amount of time has passed since the motions were 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 Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (orig. proceeding). Third, insofar as relator requests that we compel the trial court to grant his motions for nunc pro tunc judgment, an appellate court may not direct the trial court to make a specific ruling on a pending motion. See *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding).

Relator's petitions for writ of mandamus in each of these causes are DENIED. See TEX. R. APP. P. 52.8(a).

PER CURIAM

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

Delivered and filed the
21st day of December, 2016.