



**NUMBERS 13-17-00203-CR & 13-17-00205-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**IN RE BARRYON TOWNSEND**

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**On Petition for Writ of Mandamus.**

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**MEMORANDUM OPINION**

**Before Justices Contreras, Benavides, and Longoria  
Memorandum Opinion by Justice Contreras<sup>1</sup>**

Relator Barryon Townsend filed a pro se petition for writ of mandamus in the above causes on April 25, 2017 requesting that we compel the trial court to rule on his motion for nunc pro tunc judgment in trial court cause numbers 89-CR-0945-H(2) and 90-CR-1948-H(2) in the 347th District Court of Nueces County, Texas. We deny the petition for writ of mandamus in both causes.

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<sup>1</sup> 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."); *Id.* R. 47.4 (distinguishing opinions and memorandum opinions).

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*, 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).

As stated previously, relator contends that the trial court failed to rule on his motion for nunc pro tunc judgment to correct his jail time credit to include time spent in the Texas Department of Criminal Justice Special Alternative Incarceration Program, or “boot camp.” Relator contends that he filed a motion for nunc pro tunc judgment on June 14,

2016 and sent inquiries to the trial court requesting information regarding the status of that motion on August 10, 2016, September 3, 2016, and October 11, 2016.

This Court requested and received a response to the petition for writ of mandamus from the State of Texas, acting by and through the District Attorney of Nueces County, Texas. See TEX. R. APP. P. 52.2, 52.4, 52.8. The State asserts that the trial court had previously denied relator's request for nunc pro tunc relief on March 14, 2016, and relator's "continued requests for the same relief are frivolous." According to the State, relator's nunc pro tunc motion for time credits from boot camp in these causes," which is the very same request he now attempts to relitigate, was already denied." See *In re Birdwell*, 393 S.W.3d 886, 893 (Tex. App.—Waco 2012, orig. proceeding) ("[W]e believe there comes a point at which a trial court does not abuse its discretion by simply refusing to rule on every motion a litigant may file."); see also *In re Sims*, No. 05–13–00049–CV, 2013 WL 1273912, at \*1 (Tex. App.—Dallas Mar. 15, 2013, orig. proceeding) (mem. op.) ("Relator is not entitled to a writ of mandamus requiring the trial court to repeatedly rule on the same motion."). The State also asserts that relator failed to meet his burden to show that his most recent filings were appropriately filed or otherwise presented to the trial court for ruling because they lack a certification of the date of filing, a file stamp, or a notation of receipt. See *In re Mendoza*, 467 S.W.3d 76, 78 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding) (stating that there are three prerequisites for the issuance of a writ of mandamus by an appellate court with respect to a ministerial duty: (1) the lower court must have a legal duty to perform a nondiscretionary act; (2) the relator must have made a demand for performance; and (3) the subject court must have refused that

request).

The Court, having examined and fully considered the petition for writ of mandamus, the response, and the applicable law, is of the opinion that relator has failed to meet his burden to obtain mandamus relief. See *In re Harris*, 491 S.W.3d at 334; *In re McCann*, 422 S.W.3d at 704. Accordingly, we deny the petition for writ of mandamus in each cause.

DORI CONTRERAS  
Justice

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

Delivered and filed the  
10<sup>th</sup> day of May, 2017.