



NUMBER 13-17-00407-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE AARON HERNANDEZ

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Contreras¹**

Relator Aaron Hernandez² filed a pro se petition for writ of mandamus in the above cause on July 19, 2017, seeking to compel the trial court to rule on relator's (1) motion for

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).

² This original proceeding joins an appeal filed by relator arising from the same trial court cause number and conviction, *Aaron Hernandez a/k/a Arron Hernandez v. State*, filed in our cause number 13-17-00308-CR. By separate opinion issued this same date, we have dismissed that appeal for want of jurisdiction. See *Hernandez v. State*, No. 13-17-00308-CR, 2017 WL ___, at *_ (Tex. App.—Corpus Christi July ___, 2017, no pet. h.) (mem. op., not designated for publication). We note that relator identifies himself

new trial and (2) request to file an appeal. According to the petition, relator was convicted on May 23, 2016 of felony driving while intoxicated. Relator filed only a copy of his plea agreement in support of his request for mandamus relief.

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).

in this cause as “Aaron Hernandez”; however, the underlying documentation reflects proceedings pertaining to “Arron Hernandez.” This discrepancy is not material to this original proceeding.

A defendant in a criminal case may file a motion for new trial before, but no later than thirty days after, the date the trial court imposes or suspends sentence in open court. TEX. R. APP. P. 21.4(a). The trial court does not have jurisdiction to entertain an untimely motion for new trial. See *Drew v. State*, 743 S.W.2d 207, 223 (Tex. Crim. App. 1987); *In re Pettigrew*, 301 S.W.3d 920, 922–23 (Tex. App.—Tyler 2009, orig. proceeding); *Perez v. State*, 261 S.W.3d 760, 770 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd). Cf. *Cueva v. State*, 354 S.W.3d 820, 822 (Tex. Crim. App. 2011) (concurring op. on denial of reh'g on denial of petition for discretionary review) (discussing the distinction between original motions for new trial and untimely amendments to motions for new trial); *State v. Moore*, 225 S.W.3d 556, 566 (Tex. Crim. App. 2007) (same).

In the instant case, relator filed his motion for new trial almost nine months after the trial court imposed his sentence. Therefore, his motion for new trial was untimely, and the trial court had no jurisdiction to consider it. See *Drew*, 743 S.W.2d at 223; *In re Pettigrew*, 301 S.W.3d at 922–23; *Perez*, 261 S.W.3d at 770; see also TEX. R. APP. P. 21.4(a). As such, the trial court had no ministerial duty to grant relator's motion for new trial. See *Drew*, 743 S.W.2d at 223; *In re Pettigrew*, 301 S.W.3d at 922–23. Similarly, the trial court had no jurisdiction, and therefore no ministerial duty, to grant relator's request for appeal. See TEX. CODE CRIM. PROC. ANN. art. 11.07, § 3(a) (West, Westlaw through Ch. 49, 2017 R.S.); see also *Ex parte Garcia*, 988 S.W.2d 240, 240–41 (Tex. Crim. App. 1999) (per curiam); *Ater v. Eighth Ct. of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (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).

DORI CONTRERAS
Justice

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

Delivered and filed the
20th day of July, 2017.