



NUMBER 13-17-00546-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE DANIEL ALMENDAREZ YVANEZ

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Rodriguez, Benavides, and Longoria
Memorandum Opinion by Justice Benavides¹**

Daniel Amendarez Yvanez, proceeding pro se, has filed a pleading seeking “extraordinary relief” through which he contends, inter alia, that his guilt was not adjudicated properly; he was not properly admonished of his rights to file a petition for discretionary review; he was convicted in violation of various constitutional rights; and the jury that heard his case was “unauthorized” to do so. Although his pleading is unclear, relator references our appellate cause number 13-97-00300-CR and it appears that

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).

relator seeks to set aside his judgment of conviction. See *Yvanez v. State*, No. 13-97-00300-CR, 1997 WL 33644292, at *1 (Tex. App.—Corpus Christi Dec. 11, 1997) (mem. op., not designated for publication), *aff'd as modified*, 991 S.W.2d 280, 281 (Tex. Crim. App. 1999). Because the underlying trial court case has already been the subject of a direct appeal, we construe Yvanez's request for extraordinary relief as a petition for writ of mandamus. See *generally* TEX. R. APP. P. 25.1(a), (d).

To be entitled to mandamus relief, the relator must show that: (1) he has no adequate remedy at law, and (2) what he seeks to compel is a ministerial act. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (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 App. at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding).

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. In this regard, it is clear that 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).

The petition for writ of mandamus in this case fails to comply with these requirements because, in addition to other omissions, Yvanez has failed to furnish us with a record or appendix in support of his request for relief. Moreover, it appears that Yvanez seeks post-conviction relief for a final felony conviction. With limited exceptions that are not applicable here, it is “well established” that only the Texas Court of Criminal Appeals possesses jurisdiction over matters related to post-conviction proceedings where there is a final felony conviction. *Padieu v. Ct. of App. of Tex., Fifth Dist.*, 392 S.W.3d 115, 117–18 (Tex. Crim. App. 2013); see TEX. CODE CRIM. PROC. ANN. art. 11.07, § 1, 5 (West, Westlaw through 2017 1st C.S.); see also *Bd. of Pardons & Paroles ex rel. Keene v. Ct. of App. of Tex., Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995); *Ater v. Eighth Ct. of App.*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991).

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that Yvanez has not established that we possess jurisdiction over this original proceeding. See *Padieu*, 392 S.W.3d at 117–18. Accordingly, we DISMISS Yvanez’s petition for writ of mandamus for lack of jurisdiction. See TEX. R. APP. P. 52.8(a).

GINA M. BENAVIDES,
Justice

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

Delivered and filed the
13th day of October, 2017.