



NUMBERS 13-17-00666-CR & 13-17-00667-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE DAVID TYRONE THOMAS

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Contreras and Benavides
Memorandum Opinion by Justice Contreras¹**

Relator David Tyrone Thomas filed a pro se petition for writ of mandamus in the above causes on December 4, 2017, through which he asks that his convictions be set aside.² Relator previously appealed these same convictions, and those appeals are

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."); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

²Relator assails his convictions in trial court cause number 14-CRF-0281-S1 and 14-CRF-0353-S2 in the 105th District Court of Kleberg County and the respondent in these cases is the Honorable Jack Pulcher. See TEX. R. APP. P. 52.2. Because the petitions in these cases are identical, we issue one memorandum opinion addressing both causes in the interests of judicial economy.

currently pending in this Court in appellate cause numbers 13-17-00068-CR and 13-17-00069-CR.

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).

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that relator has not shown himself entitled to the

relief sought because, inter alia, the petition for writ of mandamus fails to comply with the appellate rules and relator has an adequate remedy by appeal. Accordingly, we DENY the petition for writ of mandamus in each of these causes. See TEX. R. APP. P. 52.8(a).

DORI CONTRERAS
JUSTICE

Do not publish.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

Delivered and filed this the
5th day of December, 2017.