



**NUMBER 13-19-00479-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**IN RE PHILLIP GUTHRIE**

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**On Petition for Writ of Mandamus.**

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**MEMORANDUM OPINION**

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

Relator Phillip Guthrie, proceeding pro se, filed a petition for writ of mandamus in the above cause through which he seeks to compel the trial court to rule on his motion for nunc pro tunc judgment or otherwise provide relator with jail time credit in accordance with article 42.03 of the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 42.03, § 2(a); *Ex parte Molina*, 483 S.W.3d 24, 29 (Tex. Crim. App. 2016); see also TEX. R. APP. P. 23.2(b).

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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.”); see also *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 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).

A trial court has a ministerial duty to consider and rule on motions properly filed and pending before it, and mandamus may issue to compel the trial court to act. *In re Henry*, 525 S.W.3d 381, 382 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding) (per curiam); *In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding); *Ex parte Bates*, 65 S.W.3d 133, 134 (Tex. App.—Amarillo 2001, orig. proceeding). A relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed or refused to rule on the motion within a reasonable time. *In re Henry*, 525 S.W.3d at 382; *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding); *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, 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. As the party seeking relief, the relator has the burden of providing the Court with a sufficient mandamus record to establish his right to a writ of mandamus. *Lizcano v. Chatham*, 416 S.W.3d 862, 863 (Tex. Crim. App. 2011) (orig. proceeding) (Alcala, J. concurring); *Walker*, 827 S.W.2d at 837; see TEX. R. APP. P. 52.3(k) (specifying the required contents for the appendix); R. 52.7(a) (specifying the required contents for the record).

In this case, the relator has failed to provide a complete appendix or record in support of his petition for writ of mandamus and has therefore failed to meet his burden to obtain relief. See *Walker*, 827 S.W.2d at 837; see *generally* TEX. R. APP. P. 52.3. Relator has only filed a partial copy of his judgment of conviction in cause number CR16000520-A in the 28th District Court of Nueces County, Texas; a file-stamped copy of his motion for nunc pro tunc judgment, and a bench warrant. Based on the documents before the Court, relator has neither shown that he is entitled to jail time credit or that the trial court failed or refused to rule on relator’s motion for a nunc pro tunc judgment within a reasonable time. Accordingly, we deny the petition for writ of mandamus. See *In re Harris*, 491 S.W.3d at 334; *In re McCann*, 422 S.W.3d at 704.

GREGORY T. PERKES  
Justice

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

Delivered and filed the  
7th day of October, 2019.