



**NUMBER 13-20-00134-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, Perkes, and Tijerina  
Memorandum Opinion by Justice Tijerina<sup>1</sup>**

On March 9, 2020, Phillip Guthrie, proceeding pro se, filed a “Motion to Reform Judgment” in this Court. Guthrie contends that the trial court failed to properly award him with the correct pre-sentence jail time credit and requests that we direct the trial court to correct this alleged error. Because Guthrie’s motion does not reference an order or judgment subject to appeal and he asks us to command a public officer to perform an act, we construe this pleading as a petition for writ of mandamus. *See generally* TEX. R. APP.

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

P. 25.1(a), (d); *In re Castle Tex. Prod. Ltd. P'ship*, 189 S.W.3d 400, 403 (Tex. App.—Tyler 2006, orig. proceeding) (“The function of the writ of mandamus is to compel action by those who by virtue of their official or quasi-official positions are charged with a positive duty to act.”) (citing *Boston v. Garrison*, 152 Tex. 253, 256 S.W.2d 67, 70 (1953)).

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).

It is the relator’s burden to properly request and show entitlement to mandamus relief. See *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (per curiam) (“Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.”); see generally TEX. R. APP. P. 52.3; *Lizcano v. Chatham*, 416 S.W.3d 862, 863 (Tex. Crim. App. 2011) (orig. proceeding) (Alcala, J. concurring). 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 the relator has not met his burden to obtain mandamus relief. Therefore, we deny the petition for writ of mandamus and all relief sought therein.

JAIME TIJERINA,  
Justice

Do not publish.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

Delivered and filed the  
12th day of March, 2020.