



NUMBER 13-20-00173-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE ERNESTO BENAVIDES JR.

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Benavides¹**

Relator Ernesto Benavides Jr., proceeding pro se, filed a petition for writ of mandamus in the above cause through which he requests that we direct the trial court to “correct procedural error preventing proper presentation” of relator’s case, issue a “free appellate record,” and “appoint appellant counsel.” According to the petition, relator was indicted for possession of marijuana and subsequently entered a plea agreement in 2013 for fifteen years of incarceration. Relator’s complaints arise from trial court cause number 2013-DCR-0654-A in the 107th District Court of Cameron County, Texas, and that matter

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).

has already been the subject of separate appeals. See *Benavides v. State*, No. 13-19-00197-CR, 2019 WL 2462355, at *1 (Tex. App.—Corpus Christi June 13, 2019, no pet.) (mem. op., not designated for publication) (dismissing appeal as untimely); *Benavides v. State*, No. 13-16-00646-CR, 2017 WL 541135, at *1 (Tex. App.—Corpus Christi Feb. 9, 2017, no pet.) (mem. op., not designated for publication) (dismissing appeal of interlocutory order).

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. *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 case, the relator has failed to provide a sufficient appendix or record in support of his petition for writ of mandamus and he 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. Accordingly, we DENY the petition for writ of mandamus and all relief sought therein. See *In re Harris*, 491 S.W.3d at 334; *In re McCann*, 422 S.W.3d at 704.

GINA M. BENAVIDES,
Justice

Do not publish.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

Delivered and filed the
1st day of April, 2020.