



NUMBER 13-20-00327-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE RENE RIVAS JR.

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Benavides¹**

On August 5, 2020, relator Rene Rivas Jr., proceeding pro se, filed a petition for writ of mandamus through which he seeks to compel the trial court to perform DNA testing on biological material. See TEX. CODE CRIM. PROC. ANN. art. 64.01. Relator contends that the failure to perform testing on various items, including a dress, panties, and bedsheets, resulted in his wrongful conviction for sexual assault.²

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. When granting relief, the court must hand down an opinion as in any other case.”); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

² Relator has previously raised this same issue through both an appeal and two original proceedings. See, e.g., *In re Rivas*, No. 13-19-00560-CR, 2019 WL 5700907, at *2 (Tex. App.—Corpus

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) (orig. proceeding).

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); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). 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.” TEX. R. APP. P. 52.3. The relator must furnish an appendix or record sufficient to support the claim for

Christi–Edinburg Nov. 4, 2019, orig. proceeding) (mem. op., not designated for publication); *Rivas v. State*, No. 13-16-00414-CR, 2017 WL 1228914, at *1 (Tex. App.—Corpus Christi–Edinburg Mar. 2, 2017, pet. ref'd) (mem. op., not designated for publication); *In re Rivas*, No. 13-16-00320-CR, 2016 WL 3911247, at *1 (Tex. App.—Corpus Christi–Edinburg July 11, 2016, orig. proceeding) (mem. op., per curiam).

mandamus relief. See *id.* R. 52.3(k) (specifying the required contents for the appendix); *id.* R. 52.7(a) (specifying the required contents for the record).

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. Moreover, while a trial court has a ministerial duty to rule upon a motion that is properly and timely presented to it for a ruling, it generally has no ministerial duty to rule a certain way on that motion. See *In re State ex rel. Young*, 236 S.W.3d at 210; *In re Mendoza*, 467 S.W.3d 76, 78 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding). 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
10th day of August, 2020.