



NUMBER 13-20-00462-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE VALENTIN TORRES ALVAREZ A/K/A VALENTIN ALVEREZ

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Benavides, Hinojosa, and Tijerina
Memorandum Opinion by Justice Tijerina¹**

Relator Valentin Torres Alvarez a/k/a Valentin Alvarez, proceeding pro se, an incarcerated inmate, filed a petition for writ of mandamus in the above cause through which he requests that we direct the trial court to provide him with the appellate record in cause number 2017-DCR-2121 in the 103rd District Court of Cameron County, Texas.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 This Court has previously entertained other pro se filings by relator arising from this same trial court cause number. See *In re Alvarez*, No. 13-20-00259-CR, 2020 WL 5052771, at *1 (Tex. App.—Corpus Christi—July 15, 2020, orig. proceeding) (mem. op., not designated for publication); *Alvarez v. State*, No. 13-20-00260-CR, 2020 WL 5051509, at *1 (Tex. App.—Corpus Christi—Edinburg July 15, 2020, no pet.)

Relator alleges that he requires the record in order to file an application for writ of habeas corpus under article 11.07 of the code of criminal procedure. See TEX. CODE CRIM. PROC. ANN. art. 11.07. We deny the petition for writ of mandamus.

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 rule on a properly filed and timely presented motion. See *id.*

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

(mem. op., not designated for publication); *Alvarez v. State*, No. 13-18-00410-CR, 2018 WL 4140676, at *1 (Tex. App.—Corpus Christi—Edinburg Aug. 30, 2018, no pet.) (mem. op., not designated for publication).

claim for 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).

Only the Court of Criminal Appeals possesses the authority to grant relief in a post-conviction habeas corpus proceeding where there is a final felony conviction. *Padieu v. Court of Appeals of Tx., Fifth Dist.*, 392 S.W.3d 115, 117 (Tex. Crim. App. 2013) (orig. proceeding) (per curiam). However, in this case, the relator has not filed an application for a writ of habeas corpus. Instead, he is asking the trial court to provide him with certain records for the purpose of filing such an application. The Texas Court of Criminal Appeals has held, “we perceive no reason why our exclusive Article 11.07 jurisdiction divests an appellate court of jurisdiction to decide the merits of a mandamus petition alleging that a district judge is not ruling on a motion when the relator has no Article 11.07 application pending.” *Id.* at 117-18 (“Although the records he seeks may be intended for preparation of an eventual habeas corpus application, the issue here is simply whether the trial judge has a duty to act upon his pending motion.”). Therefore, this Court has the authority to consider the merits of the relator’s petition under the circumstances presented here. See *id.* at 118 (“when there is no pending application for habeas corpus filed under Article 11.07 of the Code of Criminal Procedure, the appellate court is not without jurisdiction to rule on mandamus petitions relating to a motion requesting access to material that could be used in a future habeas application”).

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 failed to meet his burden to obtain mandamus relief. See *id.* R. 52.3, 52.7; *Barnes*, 832 S.W.2d at 426. In a case such as this one, a relator has the burden to provide the court of appeals with a record showing

a motion was properly filed, the trial court was made aware of the motion, and the motion has not been ruled on by the trial court for an unreasonable period of time. See *In re Mendoza*, 131 S.W.3d 167, 167–68 (Tex. App.—San Antonio 2004, orig. proceeding). Here, the relator did not provide this Court with a file-stamped copy of his pro se motions, a copy of the trial court’s docket or any proof indicating the trial court is aware of the pro se motions, or a record establishing that the pro se motions have awaited disposition for an unreasonable time. Because the relator did not provide this court with a sufficient record, the relator has not shown himself entitled to mandamus relief. 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.

JAIME TIJERINA
Justice

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

Delivered and filed this the
10th day of November, 2020.