

NO. 12-11-00361-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:

§

MICHAEL A. KENNEDY,

§

ORIGINAL PROCEEDING

RELATOR

§

MEMORANDUM OPINION

Relator Michael A. Kennedy, pro se, has filed a petition for writ of mandamus complaining of various actions of the trial court relating to his sentencing hearing on remand and the reporter's record. We deny the petition.

AVAILABILITY OF MANDAMUS

In a criminal case, mandamus relief is authorized only if the relator establishes that (1) he has no other adequate legal remedy to redress his alleged harm and that (2) what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). The second requirement is satisfied if the relator can show he has “‘a clear right to the relief sought’—that is to say, ‘when the facts and circumstances dictate but one rational decision’ under unequivocal, well-settled (i.e., from extant statutory, constitutional, or case law sources), and clearly controlling legal principles.” *Id.* (quoting *Buntion v. Harmon*, 827 S.W.2d 945, 947, 948 n.2 (Tex. Crim. App. 1992)). If the relator fails to satisfy either aspect of this two part test, relief should be denied. *Id.* “Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.” *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding).

Furthermore, the relator must provide an appendix that includes a certified or sworn copy of any order complained of, or any other document showing the matter complained of. TEX. R. APP. P. 52.3(k)(1)(A). And the relator must also furnish a record that includes a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding. TEX. R. APP. P. 52.7(a)(1). As an additional requirement, the record must include a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or a statement that no testimony was adduced in connection with the matter complained of. TEX. R. APP. P. 52.7(a)(2).

Here, Relator presents four complaints in his petition. However, he has not provided an appendix or a record. Consequently, we cannot conclude that he is entitled to mandamus relief.

DISPOSITION

Relator's petition for writ of mandamus is *denied*.

JAMES T. WORTHEN
Chief Justice

Opinion delivered March 7, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

MARCH 7, 2011

NO. 12-11-00361-CR

MICHAEL A. KENNEDY,
Relator
v.
HON. MARK A. CALHOON,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by MICHAEL A. KENNEDY, who is the relator in Cause No. 29326, pending on the docket of the 3rd Judicial District Court of Anderson County, Texas. Said petition for writ of mandamus having been filed herein on November 17, 2011, and the same having been duly considered, because it is the opinion of this Court that writ of mandamus should not issue, it is therefore CONSIDERED, ADJUDGED and ORDERED that the said petition for writ of mandamus be, and the same is, hereby **DENIED**.

James T. Worthen, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.