

**NO. 12-11-00376-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

***IN RE:***

§

***ROBERT SCOTT PALLM,***

§

***ORIGINAL PROCEEDING***

***RELATOR***

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***MEMORANDUM OPINION  
PER CURIAM***

Relator Robert Scott Pallm complains that the trial court has repeatedly refused to provide him a free copy of the reporter's record in his criminal trial. He seeks a writ of mandamus requiring the trial court to order the district clerk to mail him a copy of the reporter's record. The respondent is the Honorable Christi J. Kennedy, Judge of the 114th Judicial District Court, Smith County, Texas.

To demonstrate entitlement to a writ of mandamus in a criminal case, a relator must establish that (1) the trial court failed to perform a duty that is purely ministerial under the facts and the law, and that (2) the relator has no other adequate legal remedy. *State ex rel. Hill v. Fifth Court of Appeals*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001).

The record Relator has furnished in this proceeding includes two motions directed to the respondent in which he requested certain trial records. The trial court denied these motions, and Relator then filed a motion for reconsideration, which was also denied. In each of these motions, Relator informed the trial court that he needs a free copy of the record for use in his anticipated postconviction habeas proceedings.

An indigent criminal defendant is not entitled—either as a matter of equal protection or of due process—to a free record of prior proceedings for use in pursuing postconviction habeas corpus relief. *United States v. MacCollom*, 426 U.S. 317, 322-23, 96 S. Ct. 2086, 2090, 48 L. Ed. 2d 666 (1976); *In re Strickhausen*, 994 S.W.2d 936, 937 (Tex. App.—Houston [1st Dist.]

2002, orig. proceeding). A free record is available for that purpose only if the defendant shows that the habeas corpus application is not frivolous and there is a specific need for the trial records that are sought. *In re Coronado*, 980 S.W.2d 691, 693 (Tex. App.–San Antonio 1998, orig. proceeding). To the extent that Relator seeks a copy of the reporter’s record for use in his anticipated habeas proceeding, he has not made the required showing to obtain it.

In this proceeding, Relator explains that he needs a free copy of the record because he is “currently corresponding with his attorney, and requesting that he file other reversible errors, as that is within the rights of either party until the appeals court has given their opinion.” Relator did not make this specific argument in the trial court. We do not consider arguments in a petition for writ of mandamus that were not presented to the trial court. See *In re Am. Optical Corp.*, 988 S.W.2d 711, 714 (Tex. 1998) (orig. proceeding) (per curiam). Moreover, Relator’s attorney was provided access to the appellate record, which he used to prepare the appellate brief and the supplemental brief that he filed in the appeal. This court affirmed Relator’s conviction on November 30, 2011. See *Pallm v. State*, No. 10-00329-CR, slip op. at 12 (Tex. App.–Tyler Nov. 30, 2011, no pet. h.), available at <http://www.12thcoa.courts.state.tx.us/opinions/PDFopinion.asp?OpinionID=9968>.

Consequently, Relator’s request for a free record for use in the appeal is moot.

Relator has not shown that the trial court violated a ministerial duty by denying Relator’s motions for a free record. Therefore, he has not established that he is entitled to mandamus relief. Accordingly, his petition for writ of mandamus is *denied*.

Opinion delivered December 7, 2011.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)