

**NOS. 12-12-00191-CR
12-12-00192-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE: §
FRANK EARL LOVE, § *ORIGINAL PROCEEDINGS*
RELATOR §

MEMORANDUM OPINION

In these original mandamus proceedings, Relator Frank Earl Love requests an order directing the trial court to sign a judgment nunc pro tunc granting him additional jail time credit for his sentence in trial court cause number 07-CR-067. In the alternative, Relator asks to withdraw his pleas of guilty in trial court cause numbers 07-CR-067 and 07-CR-174.¹ We deny the petition.

In his petition, Relator alleges that he is entitled to 420 days of presentence jail time credit for cause number 07-CR-067 because he received 420 days of presentence jail time credit in cause number 07-CR-174. The judgments of conviction were signed on November 29, 2007.

Relator argues that he is entitled to the same presentence jail time credit for both offenses because the offense dates and sentence dates were the same. Relator also implies in this argument that his guilty plea was conditioned upon receiving the same amount of jail time credit in both cause numbers.

The record includes a copy of the judgment in each of the aforementioned cause numbers. In cause number 07-CR-067, the judgment states that Relator is to receive jail time credit from October 6, 2006, to December 8, 2006, totaling 63 days. In cause number 07-CR-

¹ Relator seeks to withdraw his guilty pleas on the ground that they were unknowingly made. The appropriate vehicle to challenge the voluntariness of a guilty plea is an application for writ of habeas corpus filed with the court of criminal appeals. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2011).

174, the judgment states that Relator is to receive jail time credit from October 6, 2006, to November 29, 2007, totaling 420 days. A letter from a TDCJ Program Specialist to Relator confirms the presentence jail time credit as recorded in the judgments of conviction.²

A copy of the docket sheet in cause number 07-CR-067 shows that the trial court considered and denied Relator's motion for nunc pro tunc on May 19, 2011. The notation on the docket sheet reads as follows:

[Defendant] was incarcerated in the Houston County jail from 3/2/07 to 7/16/07 for a different PCS < 1 gram charge. [Defendant] was released to the Holiday Unit on 7/16/07[,] but there was no hold on [Defendant] for this cause [number]. On this cause [number], [Defendant] was granted a personal recognizance bond with conditions on 12/8/06 and was released from custody that day.

Texas Rule of Appellate Procedure 52 sets out the requisites for filing a petition for a writ of mandamus. Among these requirements are that the petition must include, under the appropriate headings, the identity of parties and counsel, a table of contents, an index of authorities, a statement of jurisdiction, a statement of facts, and an argument section containing appropriate citations to authorities and to the appendix or record. *See* TEX. R. APP. P. 52.3(a)-(k). Relator's petition does not meet these requirements.

Moreover, Rule 52.7 requires the relator to file with his petition a certified or sworn copy of every document that is material to his claim for relief and that was filed in any underlying proceeding. TEX. R. APP. P. 52.7(a)(1). Without a sufficient record, a party seeking mandamus relief has not proved any entitlement to the writ. *In re Pena*, 104 S.W.3d 719, 719 (Tex. App.—Tyler 2003, orig. proceeding). Here, Relator does not provide any documentation to verify his allegations that his guilty pleas were conditioned upon receiving the same amount of jail time credit for both trial court cause numbers. Nor does the record show any other facts supporting Relator's contention that he is entitled to additional jail time credit. Consequently, we cannot conclude that Relator is entitled to mandamus relief.

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

² The letter stated that the begin date for the sentence in cause number 07-CR-174 was October 6, 2006, while the begin date for cause number 07-CR-067 was September 27, 2007. October 6, 2006, was 420 days prior to November 29, 2007, and September 27, 2007 was 63 days prior to November 29, 2007—the date Relator pleaded guilty in each cause number.

SAM GRIFFITH
Justice

Opinion delivered July 31, 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

JULY 31 2012

NOS. 12-12-00191-CR
12-12-00192-CR

FRANK EARL LOVE,
Relator
v.
HON. PAM FLETCHER,
Respondent

ORIGINAL PROCEEDINGS

ON THIS DAY came to be heard the petitions for writ of mandamus filed by **FRANK EARL LOVE**, who is the relator in Cause Nos. 07-CR-067 and 07-CR-174, pending on the docket of the 349th Judicial District Court of Houston County, Texas. Said petitions for writ of mandamus having been filed herein on May 24, 2012, and the same having been duly considered, because it is the opinion of this Court that these writs of mandamus should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petitions for writ of mandamus be, and the same are, hereby **DENIED**.

Sam Griffith, Justice.

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