

NO. 12-12-00295-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:

§

MICHAEL ALLYN KENNEDY,

§

ORIGINAL PROCEEDING

RELATOR

§

MEMORANDUM OPINION

Relator Michael Allyn Kennedy requests a writ of mandamus directing the trial court to provide him a copy of the judgment pertaining to Relator's 1984 conviction for burglary of a habitation. We deny the petition.

BACKGROUND

In 1984, Relator was convicted of burglary of a habitation and sentenced to imprisonment for five years. He filed a notice of appeal, but did not file a brief and made no showing of indigence. Accordingly, we reviewed the record for fundamental error, found none, and affirmed the conviction. *See generally Kennedy v. State*, No. 12-84-00138-CR (Tex. App.–Tyler Apr. 18, 1985, pet. denied) (not designated for publication).

Relator was subsequently charged with felony theft. The indictment included allegations that Relator had two prior felony convictions, including the 1984 conviction for burglary of a habitation. At trial, the jury found Relator guilty of theft and assessed his punishment at imprisonment for sixty-two years. *See Kennedy v. State*, No. 12-08-00246-CR, 2009 WL 4829989, at *2 (Tex. App.–Tyler Dec. 16, 2009, pet. stricken). We reversed the trial court's judgment as to punishment and remanded for a new sentencing hearing after concluding that the State did not prove the finality of the 1984 conviction. *See id.* at *4. At the conclusion of the second sentencing hearing, the jury assessed Relator's punishment at imprisonment for ninety-

nine years and a ten thousand dollar fine. See *Kennedy v. State*, No. 12-11-00041-CR, 2012 WL 3201924, at *1 (Tex. App.–Tyler Aug. 8, 2012, no pet.).

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).

Here, Relator appealed the judgment from the second sentencing hearing, and this court has issued its opinion. See generally *Kennedy*, 2012 WL 3201924. Relator alleges, however, that he needs a copy of the 1984 judgment because he intends to file a motion for rehearing and, potentially, a petition for discretionary review. Therefore, he requests a writ of mandamus directing the trial court to provide the requested copy.

The district clerk has the duty to receive and file all papers in criminal cases. See TEX. CODE CRIM. PROC. ANN. 2.21 (West Supp. 2012). We know of no duty imposed upon trial judges to provide copies of documents that have been filed with the district clerk. And Relator has not presented any argument or authority to show that the trial judge in this case has any such duty.¹ Consequently, Relator cannot meet his burden to establish that the action he seeks to compel is a ministerial act. Therefore, he cannot show himself entitled to mandamus relief. Accordingly, Relator’s petition for writ of mandamus is *denied*.

JAMES T. WORTHEN

Chief Justice

Opinion delivered October 31, 2012.

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

(DO NOT PUBLISH)

¹ As an aside, we note that Appellant was provided a copy of the appellate record for use in preparing the brief.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

OCTOBER 31, 2012

NO. 12-12-00295-CR

MICHAEL ALLYN 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 ALLYN 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 September 10, 2012, and the same having been duly considered, because it is the opinion of this Court that a 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, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.