

NO. 12-15-00067-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:

§

JODY FORD MCCREARY,

§

ORIGINAL PROCEEDING

RELATOR

§

***MEMORANDUM OPINION
PER CURIAM***

Relator Jody Ford McCreary filed a petition for writ of mandamus complaining of the trial court's order denying Relator's motion for judgment *nunc pro tunc*. Relator asserts in this proceeding that the judgment of conviction in the underlying criminal case erroneously states that he pleaded guilty and that the trial court abused its discretion by failing to correct the error.

"The purpose of a *nunc pro tunc* judgment is to provide a method for trial courts to correct the record when there is a discrepancy between the judgment as pronounced in court and the judgment reflected in the record." *Blanton v. State*, 369 S.W.3d 894, 897-98 (Tex. Crim. App. 2012). *Nunc pro tunc* judgments are for correction of clerical errors only. *State v. Bates*, 889 S.W.2d 306, 309 (Tex. Crim. App. 1994). "A clerical error is one which does not result from judicial reasoning or determination." *Ex parte Poe*, 751 S.W.2d 873, 876 (Tex. Crim. App. 1988). An order denying a motion for judgment *nunc pro tunc* is not appealable. *Ex parte Ybarra*, 149 S.W.3d 147, 148-49 (Tex. Crim. App. 2004). Therefore, the appropriate remedy for denial of a motion for judgment *nunc pro tunc* is mandamus in the court of appeals. *Id.*

In an original proceeding, the relator is required to file an appendix as part of his petition and also a record. *See* TEX. R. APP. P. 52.3(k), 52.7. The contents of both are prescribed by the rules of appellate procedure. *See* TEX. R. APP. P. 52.3(k)(1), 52.7(a). Here, Relator did not provide an appendix and a record. Without an appendix and a record, we are unable to

determine that Relator is entitled to mandamus relief. Accordingly, we *deny* Relator's petition for writ of mandamus.

Opinion delivered March 25, 2015.

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

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 25, 2015

NO. 12-15-00067-CR

JODY FORD MCCREARY,

Relator

V.

HON. KERRY L. RUSSELL,

Respondent

Appeal from the 7th District Court

of Smith County, Texas (Tr.Ct.No. 007-1110-10)

ON THIS DAY came to be heard the petition for writ of mandamus filed by **JODY FORD MCCREARY**, who is the relator in Cause No.007-1110-10, pending on the docket of the 7th Judicial District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on March 19, 2015, 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**.

By *per curiam* opinion.

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