

NO. 12-17-00245-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
MICHAEL KENNEDY, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

In 1986, Relator, Michael Kennedy, was convicted of burglary of a building and sentenced to imprisonment for twenty years in trial court cause number 19061. He has filed this original proceeding, in which he complains that there are no trial records showing that a trial occurred or that he was sentenced; thus, he has been deprived of a fair trial. He requests that his sentence be overturned.

Relator, however, has not provided the “clear and concise argument” and “appropriate citations to authorities” required by Texas Rule of Appellate Procedure 52.3(h). *See* TEX. R. APP. P. 52.3(h). Nor has he provided this Court with the necessary documents required by the rules of appellate procedure. *See* TEX. R. APP. P. 52.3(k), 52.7(a)(1). Moreover, Appellant previously appealed his conviction, which this Court affirmed. *See Kennedy v. State*, No. 12-86-00248-CR (Tex. App.—Tyler Feb. 25, 1988, no pet.) (not designated for publication). Additionally, courts of appeals do not have authority to issue writs of mandamus regarding complaints that may only be raised by a post-conviction habeas corpus proceeding. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991); *see also In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding). “To complain about any action, or inaction, of the convicting court, the applicant may seek mandamus relief from the Court of Criminal Appeals.” *In re Briscoe*, 230 S.W.3d 196, 196-97 (Tex. App.—

Houston [14th Dist.] 2006, orig. proceeding).¹ Accordingly, we *deny* the petition for writ of mandamus.

Opinion delivered August 9, 2017.

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

(DO NOT PUBLISH)

¹ On February 15, 2017, the Texas Court of Criminal Appeals issued an abuse of writ order against Relator, in which it found that he (1) filed seven applications regarding his conviction, (2) “continues to raise issues that have been presented and rejected in previous applications or that should have been presented in previous applications[.]” and (3) “[b]ecause of his repetitive claims, ... Applicant’s claims are barred from review under Article 11.07, § 4, and are waived and abandoned by his abuse of the writ.” *Ex Parte Kennedy*, No. WR-75,385-24 (Tex. Crim. App. Feb. 15, 2017). This order has been applied to trial court cause number 19061, as recently as October of 2016. *See Ex parte Kennedy*, No. WR-75,385-21 (Tex. Crim. App. Oct. 12, 2016).



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

AUGUST 9, 2017

NO. 12-17-00245-CR

IN RE: MICHAEL KENNEDY, RELATOR

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Michael Kennedy; who is the relator in Cause No. 19061. Said petition for writ of mandamus having been filed herein on August 7, 2017, and the same having been duly considered, because it is the opinion of this Court that a writ 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.