

NO. 12-17-00359-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

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

MEMORANDUM OPINION
PER CURIAM

Michael A. Kennedy filed this original proceeding, in which he contends that a civil lawsuit is pending in Anderson County against the justices of this Court, and he requests that a trial court be ordered to hear the lawsuit. Relator has also filed a motion to recuse the justices of this Court from involvement in the civil lawsuit.

In recent months, Relator has filed multiple proceeding alleging that a civil lawsuit is pending and seeking recusal of this Court’s justices. Relator has not provided this Court with any documents evidencing the filing, status, or pendency of a civil lawsuit. *See* TEX. R. APP. P. 52.3(k), 52.7. The clerk of this Court contacted Anderson County and has been unable to verify that a pending lawsuit exists. Moreover, Relator’s motion to recuse fails to comply with the applicable rule regarding the contents of motions to recuse. *See* TEX. R. CIV. P. 18a. Even so, the applicable rules governing recusal apply to judges in which the case is pending. *See* TEX. R. APP. P. 16.3. Until an appeal from a lawsuit is properly pending before this Court, there is nothing from which the Court may recuse itself. *See id.*

Moreover, Relator’s repeated filing of frivolous proceedings wastes scarce judicial and fiscal resources.¹ *See Ex parte Jones*, 97 S.W.3d 586, 588 (Tex. Crim. App. 2003); *see also In*

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) “continues to raise issues that have been presented and rejected in previous applications or that should have been presented in previous applications[.]” and (2) “[b]ecause of his repetitive claims, ...

re Lucas, No. 09-14-00106-CR, 2014 WL 1285396 (Tex. App.—Beaumont Mar. 26, 2014, orig. proceeding) (mem. op., not designated for publication). The rules of appellate procedure allow an appellate court to impose just sanctions on a party who is not acting in good faith as indicated by (1) filing a petition that is clearly groundless; (2) grossly misstating or omitting an obviously important and material fact in the petition or response; or (3) filing an appendix or record that is clearly misleading because of the omission of obviously important and material evidence or documents. TEX. R. APP. P. 52.11; *see also In re Altschul*, 146 S.W.3d 754, 755 (Tex. App.—Beaumont 2004, orig. proceeding). Nevertheless, in an effort to allow Relator to be heard, this Court has chosen not to impose such sanctions on Relator at this time.

Because there is nothing before us to review, we **deny** Relator’s petition for writ of mandamus and **overrule** his motion to recuse.

Opinion delivered December 21, 2017.

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

(DO NOT PUBLISH)

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).



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

DECEMBER 21, 2017

NO. 12-17-00359-CR

MICHAEL A. KENNEDY,
Relator

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Michael A. Kennedy; who is the relator in Cause No. 29326. Said petition for writ of mandamus having been filed herein on November 16, 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.