

**NOS. 12-17-00404-CV
12-17-00405-CV
12-17-00406-CV**

**IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS**

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

***MEMORANDUM OPINION
PER CURIAM***

Relator, Michael A. Kennedy, has filed three different original proceedings related to trial court cause number DCCV17-578-CV (cause number 12-17-00404-CV) and two unidentified proceedings in which he claims entitlement to good conduct time (cause number 12-17-00405-CV) and claims he has been falsely imprisoned (cause number 12-17-00406-CV). On December 27, 2017, this Court notified Relator that his petitions for writ of mandamus in each case fail to comply with Texas Rules of Appellate Procedure 52.3 and 52.7. We informed Relator that his petitions would be referred to the Court for dismissal unless amended petitions correcting the defects were filed on or before January 8, 2018. Relator has not filed amended petitions correcting the errors or otherwise responded to this Court's notices.

Texas Rule of Appellate Procedure 52.7 requires the relator to file a record as part of his petition in an original proceeding. *See* TEX. R. APP. P. 52.7. Specifically, a relator must file (1) a certified or sworn copy of every document that is material to his claim for relief and that was filed in any underlying proceeding; and (2) "a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or a statement that no testimony was adduced in connection with the matter complained." TEX. R. APP. P. 52.7(a). It is a relator's burden to provide this Court with a sufficient record to establish

the right to mandamus relief. See *In re Moseley*, No. 05-17-01125-CV, 2017 WL 4402062, at *1 (Tex. App.—Dallas Oct. 4, 2017, orig. proceeding) (mem. op.). Absent a record, this Court cannot conduct a meaningful review of Relator’s requests for relief. See *id.*

Moreover, Relator has repeatedly filed frivolous proceedings with this Court, despite warnings that such proceedings waste scarce judicial and fiscal resources and may warrant sanctions. See *Ex parte Jones*, 97 S.W.3d 586, 588 (Tex. Crim. App. 2003); see also *In 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). We again remind Relator that further filings of this nature could be considered an abuse of the judicial process for which he could be sanctioned. See *In re Schmotzer*, No. 10-15-00433-CR, 2015 WL 9462178, at *1 (Tex. App.—Waco Dec. 23, 2015, orig. proceeding) (mem. op., not designated for publication); see also *Altschul*, 146 S.W.3d at 755 (ordering relator to pay filing fee and costs incurred by the State and directing appellate court clerk to forward cost bill to the Texas Department of Criminal Justice with directions to withdraw the amount of costs from relator’s inmate trust account).

Accordingly, because Relator’s petitions fail to comply with the appellate rules, they present nothing for this Court to review. We, therefore, *deny* his petitions for writ of mandamus.¹

Opinion delivered January 31, 2018.

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

(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) “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, ... 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

JANUARY 31, 2018

NO. 12-17-00404-CV

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. DCCV17-578-3. Said petition for writ of mandamus having been filed herein on December 27, 2017, and the same having been duly considered, because it is the opinion of this Court that the 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.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

JANUARY 31, 2018

NO. 12-17-00405-CV

MICHAEL A. KENNEDY,
Relator

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Michael A. Kennedy. Said petition for writ of mandamus having been filed herein on December 27, 2017, and the same having been duly considered, because it is the opinion of this Court that the 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.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

JANUARY 31, 2018

NO. 12-17-00406-CV

MICHAEL A. KENNEDY,
Relator

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Michael A. Kennedy. Said petition for writ of mandamus having been filed herein on December 27, 2017, and the same having been duly considered, because it is the opinion of this Court that the 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.