

NO. 12-18-00188-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
MATTHEW BLAKE BALLARD, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

Matthew Blake Ballard, acting pro se, filed this original proceeding in which he challenges Respondent's purported refusal to entertain his motion for judgment nunc pro tunc, appoint counsel, hold a hearing at which Relator was allowed to be present, and credit his sentence with all the time that Relator was confined up to pronouncement of the judgment and sentence.¹ According to Relator, he filed his motion on May 21, 2018 and Respondent issued a letter order stating that he was not entitled to the requested time credits. Relator did not provide this Court with a file marked copy of either his motion or Respondent's order.

On July 16, 2018, this Court notified Relator that his petition failed to comply with the requirements of Texas Rules of Appellate Procedure 9.5, 52.3(k), and 52.7. This Court further informed Relator that the petition would be referred to the Court for dismissal unless Relator provided the required certificate of service, appendix, and record on or before July 26. The deadline has passed and Relator has not furnished this Court with a compliant record, appendix, or certificate of service, or otherwise responded to this Court's notice.

Under rule of appellate procedure 9.5, relator was required to serve all parties to the proceeding with a copy of his petition and to provide this Court with a certificate of service. *See* TEX. R. APP. P. 9.5(a), (e). A relator must also file an appendix and a record as part of his

¹ Respondent is the Honorable Campbell Cox, II, Judge of the 145th District Court in Nacogdoches County, Texas. Relator states that his criminal case proceeded in the 420th District Court before Respondent; thus, we assume Respondent presided over Relator's case by assignment. The State of Texas is the Real Party in Interest.

petition in an original proceeding. *See* TEX. R. APP. P. 52.3(k), 52.7. The record must include (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 a sufficient record to establish the right to mandamus relief. *In re Daisy*, No. 12-13-00266-CR, 2014 WL 5577068, at *2 (Tex. App.—Tyler Aug. 29, 2014, orig. proceeding) (mem. op., not designated for publication). Absent a record, this Court cannot determine whether Relator is entitled to mandamus relief. *See In re McCreary*, No. 12-15-00067-CR, 2015 WL 1395783, at *1 (Tex. App.—Tyler Mar. 25, 2015, orig. proceeding) (mem. op., not designated for publication). Thus, we **deny** Relator’s petition for writ of mandamus.

Opinion delivered September 5, 2018.

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

SEPTEMBER 5, 2018

NO. 12-18-00188-CR

MATTHEW BLAKE BALLARD,
Relator
V.

HON. CAMPBELL COX, II,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Matthew Blake Ballard; who is the relator in Cause No. F1420760, pending on the docket of the 420th Judicial District Court of Nacogdoches County, Texas. Said petition for writ of mandamus having been filed herein on July 16, 2018, 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.