

NO. 12-18-00353-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
ALFRED EUGENE AISHMAN, JR., § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

Alfred Eugene Aishman, Jr., acting pro se, filed this original proceeding to complain of Respondent’s failure to respond to letters and rule on various motions, including a motion for DNA testing and for discovery of test results.¹ On December 21, 2018, the Clerk of this Court notified Relator that his petition for writ of mandamus failed to comply with Texas Rule of Appellate Procedure 52.7. The notice further informed Relator that his petition would be referred to the Court for dismissal unless he provided the record on or before December 31, 2018. The deadline has passed and Relator has not filed a mandamus record with this Court.

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. *In re Daisy*, No. 12-13-00266-CR, 2014 WL 5577068, at *2 (Tex. App.—Tyler

¹ Respondent is the Honorable Christi J. Kennedy, Judge of the 114th District Court in Smith County, Texas. The State of Texas is the Real Party in Interest.

Aug. 29, 2014, orig. proceeding) (mem. op., not designated for publication). In this case, Relator did not provide the record in accordance with Rule 52.7. 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 (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 January 9, 2019.

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(DO NOT PUBLISH)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

JANUARY 9, 2019

NO. 12-18-00353-CR

ALFRED EUGENE AISHMAN, JR.,
Relator
V.

HON. CHRISTI J. KENNEDY,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Alfred Eugene Aishman, Jr.; who is the relator in Cause No. 114-1135-05-A, pending on the docket of the 114th District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on December 21, 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.