

NO. 12-19-00292-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
DAMEON MOSLEY, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

The State of Texas charged Relator, Dameon Mosley, with capital murder. Relator filed a pretrial application for writ of habeas corpus to challenge the constitutionality of the death penalty as applied to those with an intellectual disability. Respondent denied the motion on August 5, 2019, and Relator filed an appeal from that denial, which is currently pending in this Court under appellate cause number 12-19-00267-CR.¹ On August 22, Relator filed a petition for writ of mandamus and stay of capital proceedings, seeking an order directing Respondent to stay Relator’s criminal trial pending resolution of his appeal in cause number 12-19-00267-CR.

That same day, the Clerk of this Court notified Relator that his petition for writ of mandamus failed to comply with Texas Rules of Appellate Procedure 52.2, 52.3(a)-(f), (h), and (j), and 52.7. The notice further informed Relator that his petition would be referred to the Court for dismissal unless he provided an amended petition and the record on or before September 3. This deadline expired and Relator has not filed a mandamus record or an amended petition with this Court to correct the defects identified in the August 22 notice.

A party seeking mandamus relief must bring forward all that is necessary to establish his claim for mandamus relief. *See* TEX. R. APP. P. 52. This entails filing a petition that includes contents such as the identity of parties and counsel, an index of authorities, a statement of the case, a statement of jurisdiction, issues presented, a certification, and clear and concise arguments for

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.

the contentions made, with appropriate citations to authorities and to the appendix or record. TEX. R. APP. P. 52.3(a)-(f), (h), (j). Additionally, 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 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).

Accordingly, because Relator’s petition fails to comply with the appellate rules, he presents nothing for this Court to review. We, therefore, **deny** his petition for writ of mandamus.

Opinion delivered September 11, 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

SEPTEMBER 11, 2019

NO. 12-19-00292-CR

DAMEON MOSLEY,
Relator
V.

HON. CHRISTI J. KENNEDY,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Dameon Mosley; who is the relator in appellate cause number 12-19-00292-CR and defendant in trial court cause number 114-0510-17, pending on the docket of the 114th Judicial District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on August 22, 2019, 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.