

**NOS. 12-20-00208-CR
12-20-00209-CR**

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

IN RE: §
ROBERT L. CLARK, SR., § *ORIGINAL PROCEEDING*
RELATOR §

***MEMORANDUM OPINION
PER CURIAM***

Robert L. Clark, Sr., acting pro se, seeks a writ of mandamus requiring Respondent¹ to release him from jail pursuant to Article 17.151 of the Texas Code of Criminal Procedure.² According to Relator, he was arrested on or about June 25, 2020, and at a hearing on August 20, the State and Relator’s trial counsel “had contentions about enhancement paragraphs.” Relator states that Respondent rescheduled the hearing. He complains that the State was not ready.

Relator acknowledges that he is represented by counsel. A criminal defendant is not entitled to hybrid representation. *Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007). Relator must look to appointed counsel for representation in this original proceeding. See *In re Bice*, No. 12-12-00038-CR, 2012 WL 2033131, at *1 (Tex. App.—Tyler June 6, 2012, orig. proceeding) (mem. op., not designated for publication). The absence of a right to hybrid representation means Relator’s pro se petition for writ of mandamus presents nothing for this court to review. See *Patrick v. State*, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995); see also *In re Searcy*, No. 14-20-00481-CR, 2020 WL 4012007, at *1 (Tex. App.—Houston [14th Dist.]

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.

² See TEX. CODE CRIM. PROC. ANN. art. 17.151 (West 2015) (“Release because of delay”).

July 16, 2020, orig. proceeding) (mem. op., not designated for publication) (per curiam); **Bice**, 2012 WL 2033131, at *1. Accordingly, we **deny** the petition for writ of mandamus.³

Opinion delivered September 16, 2020.

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

(DO NOT PUBLISH)

³ We also note that “[m]andamus relief is not available to compel an action which has not first been demanded of, and refused by, the trial court.” *In re Marshall*, No. 14-09-00796-CR, 2010 WL 27054, at *2 (Tex. App.—Houston [14th Dist.] Jan. 7, 2010, orig. proceeding) (mem. op., not designated for publication). Relator does not provide this Court with a record to show that he filed a motion with Respondent to request relief under Article 17.151, brought the motion to Respondent’s attention and requested a hearing or ruling on the motion, or that Respondent refused to act on the motion within a reasonable time. See *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding) (to obtain writ of mandamus compelling trial court to consider and rule on motion, relator must show that trial court (1) had a legal duty to perform a nondiscretionary act, (2) was asked to perform the act, and (3) failed or refused to do so). Thus, Relator would not be entitled to mandamus relief. See *In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (per curiam) (denying petition for writ of mandamus asking appellate court to order judge to hold a hearing on habeas application seeking personal bond under Article 17.151; relator provided no certified or sworn copy of the habeas application or a record that showed application was filed and brought to trial court’s attention).



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

SEPTEMBER 16, 2020

NO. 12-20-00208-CR

ROBERT L. CLARK, SR.,

Relator

V.

HON. CHRISTI J. KENNEDY,

Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Robert L. Clark, Sr.; who is the relator in appellate cause number 12-20-00208-CR and the defendant in trial court cause number 114-0255-20, 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 26, 2020, 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.



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TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
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ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Robert L. Clark, Sr.; who is the relator in appellate cause number 12-20-00209-CR and the defendant in trial court cause number 114-0814-20, 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 26, 2020, 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.