

NO. 12-22-00010-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
DAVID RAY STUA, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

David Ray Stua, acting pro se, filed this original proceeding in which he asserts that he wants to act as co-counsel with his court appointed attorney rather than acting pro so in the criminal proceedings against him or having appointed counsel act as standby counsel.¹ Thus, he seeks a writ of mandamus ordering Respondent to rule on his motion for hybrid representation.²

On January 18, 2022, the Clerk of this Court informed Relator that his petition fails to comply with appellate Rules 52.3(a)-(d), (f)-(g) and (k) and 52.7. *See* TEX. R. APP. P. 52.3 (form and contents of petition); *see also* TEX. R. APP. P. 52.7 (record). The notice warned that the petition would be referred to this Court for dismissal unless Relator provided an amended petition and the record on or before January 28. This deadline expired without a response from Relator.

Generally, 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. The petition must contain certain items, including the identity of parties and counsel, a table of contents, an index of authorities, a statement of the case, issues presented, a statement of facts, and an appendix. *See*

¹ Respondent is the Honorable Paul E. White, Judge of the 159th District Court in Angelina County, Texas. The State of Texas is the Real Party in Interest.

² Relator is not entitled to hybrid representation and a trial court may disregard any pro se motions filed by a defendant who is represented by counsel. *See Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007); *see also In re Adkins*, No. 12-15-00135-CR, 2015 WL 3505202, at *1 n.1 (Tex. App.—Tyler June 3, 2015, no pet.) (mem. op., not designated for publication).

TEX. R. APP. P. 52.3(a)-(d), (f)-(g), (k). Texas Rule of Appellate Procedure 52.7 requires the relator to file a record as part of his petition in an original proceeding. 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 record sufficient to establish the right to extraordinary relief. See *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 a record in accordance with Rule 52.7. Absent a record, we cannot determine whether Relator is entitled to relief. See *In re McCreary*, No. 12-15-00067-CR, 2015 WL 1395783 (Tex. App.–Tyler Mar. 25, 2015, orig. proceeding) (per curiam) (mem. op., not designated for publication). Because Relator’s petition fails to comply with the appellate rules, he presents nothing for this Court to review.³ Therefore, we *deny* his petition for writ of mandamus.

Opinion delivered February 9, 2022.

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

(DO NOT PUBLISH)

³ Pro se litigants are held to the same standards as licensed attorneys and must comply with all applicable rules of procedure; otherwise, pro se litigants would benefit from an unfair advantage over parties represented by counsel. *In re Guerrero*, No. 12-21-00100-CR, 2021 WL 3412558, at *1 n.3 (Tex. App.—Tyler Aug. 4, 2021, no pet.) (mem. op., not designated for publication).



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

FEBRUARY 9, 2022

NO. 12-22-00010-CR

DAVID RAY STUA,
Relator
V.

HON. PAUL E. WHITE,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by David Ray Stua; who is the relator in appellate cause number 12-22-00010-CR and the defendant in trial court cause number 2021-0580, pending on the docket of the 159th Judicial District Court of Angelina County, Texas. Said petition for writ of mandamus having been filed herein on January 18, 2022, 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.