

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

In re Paul A. Propes, Jr.

No. 05-22-01217-CV (Tex. App.—Dallas Nov. 17, 2022) (mem. op.) · No. No. 05-22-01217-CV · Decided November 17, 2022

SUMMARY

The Fifth District Court of Appeals of Texas denied Paul A. Propes, Jr.’s petition for a writ of mandamus seeking to compel the trial court to respond to and rule on his motion for coram nobis. The court held that the petition failed to comply with multiple Texas Rules of Appellate Procedure requirements, including certification and submission of an appendix or record, and therefore did not establish entitlement to mandamus relief.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Erin A. Nowell; Justice Myers; Justice Nowell; Justice Goldstein
JURISDICTION	Texas
DECIDED	November 17, 2022
DOCKET	No. 05-22-01217-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding in which relator sought a writ of mandamus compelling the trial court to respond to, hold a hearing on, and rule on a motion for coram nobis.
STANDARD OF REVIEW	To obtain mandamus relief in a criminal case, the relator must establish that the trial court violated a ministerial duty and that the relator lacks an adequate remedy at law. The relator bears the burden of providing a sufficient record demonstrating entitlement to relief.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; limited precedential value.
PARTIES	Paul A. Propes, Jr., Relator

TOPICS

- writ of certiorari
- appellate procedure
- post-conviction relief
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Propes established entitlement to mandamus relief by showing that the trial court violated a ministerial duty and that he had no adequate remedy at law.
2. Whether the petition should be denied because it failed to comply with the Texas Rules of Appellate Procedure and lacked a certified appendix or record.

HOLDINGS

1. A relator seeking mandamus relief in a criminal case must show that the trial court violated a ministerial duty and that there is no adequate remedy at law.
2. A mandamus relator bears the burden of providing the appellate court with a sufficient record to demonstrate entitlement to relief.

KEY QUOTATIONS

“To establish a right to mandamus relief in a criminal case, the relator must show that the trial court violated a ministerial duty and there is no adequate remedy at law.”

“Without a certified petition and appendix or record, relator has not carried his burden.”

FACTUAL BACKGROUND

Propes sought mandamus relief concerning a motion for coram nobis allegedly pending in the trial court. His mandamus petition was not properly certified and was not accompanied by an appendix or record. Because these deficiencies prevented him from carrying his burden to establish entitlement to relief, the court denied the petition.

PROCEDURAL HISTORY

Propes filed a petition for writ of mandamus in the Court of Appeals after the trial court allegedly failed to respond to, hold a hearing on, or rule on his motion for coram nobis. The appellate court denied the petition because it failed to comply with multiple Texas Rules of Appellate Procedure requirements and was not supported by a certified record or appendix.

DISPOSITION

writ_denied

CASES CITED

- In re State ex rel. Weeks, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding)
- Walker v. Packer, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding)

- In re Phillips, No. 05-21-01068-CV, 2022 WL 278240, at *1 (Tex. App.—Dallas Jan. 31, 2022, orig. proceeding) (mem. op.)
- In re Butler, 270 S.W.3d 757, 758-59 (Tex. App.—Dallas 2008, orig. proceeding)
- In re Jones, No. 05-22-01113-CV, 2022 WL 12338493, at *1 (Tex. App.—Dallas Oct. 21, 2022, orig. proceeding) (mem. op.)

OPINION

PER CURIAM.

DENIED and Opinion Filed November 17, 2022 S In The Court of Appeals Fifth District of Texas at Dallas No. 05-22-01217-CV IN RE PAUL A. PROPES, JR., Relator Original Proceeding from the 199th Judicial District Court Collin County, Texas Trial Court Cause No. 199-82537-08 MEMORANDUM OPINION Before Justices Myers, Nowell, and Goldstein Opinion by Justice Nowell Before the Court is relator’s November 14, 2022 petition seeking a writ of mandamus compelling the trial court to respond to, hold a hearing on, and rule on relator’s motion for “Coram Nobis.” To establish a right to mandamus relief in a criminal case, the relator must show that the trial court violated a ministerial duty and there is no adequate remedy at law.

In re State ex rel. Weeks, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding). Relator bears the burden of providing the Court with a sufficient record to show he is entitled to relief. Walker v. Packer, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). Relator’s petition does not comply with the Texas Rules of Appellate Procedure in numerous respects.

See, e.g., TEX. R. APP. P. 52.3(a)–(h), (j)–(k), 52.7(a). For instance, relator’s petition is not properly certified. See TEX. R. APP. P. 52.3(j); In re Phillips, No. 05-21-01068-CV, 2022 WL 278240, at *1 (Tex. App.—Dallas Jan. 31, 2022, orig. proceeding) (mem. op.); In re Butler, 270 S.W.3d 757, 758 (Tex. App.—Dallas 2008, orig. proceeding). Relator’s petition is also not supported by an appendix or record.

See TEX. R. APP. P. 52.3(k)(1)(A), 52.7(a)(1); Butler, 270 S.W.3d at 759. Without a certified petition and appendix or record, relator has not carried his burden. See In re Jones, No. 05-22-01113-CV, 2022 WL 12338493, at *1 (Tex. App.—Dallas Oct. 21, 2022, orig. proceeding) (mem. op.); Butler, 270 S.W.3d at 758–59.

Accordingly, we deny relator’s petition for writ of mandamus. /Erin A. Nowell/ ERIN A. NOWELL JUSTICE 221217F.P05 –2–