Opinion issued August 8, 2017

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00585-CR

IN RE DONALD WAYNE HEROD, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Donald Wayne Herod, has filed a pro se petition for a writ of mandamus seeking to compel the respondent district judge to rule on his motion for one free copy of the trial transcript in the underlying criminal proceeding.[1]

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[1] The underlying case is *The State of Texas v. Donald Wayne Herod*, Cause No. 1152281, in the 339th District Court, Harris County, Texas, the Honorable Maria T. Jackson presiding. This Court affirmed relator's conviction under that cause number for the third-degree felony offense of driving while intoxicated—third offense. *Donald Wayne Herod v. State*, No. 01-08-00908-CR, 2010 WL 1981577, at *5 (Tex. App.—Houston [1st Dist.] May 13, 2010, pet. ref'd) (mem. op.) (not designated for publication).

We **deny** the petition for writ of mandamus, which is procedurally defective. *See* TEX. R. APP. P. 52.8(a), (d); *see also id.* 52.3(k)(1)(A) (stating that relator is required to file "a certified or sworn copy of any . . . document showing the matter complained of"); *id.* 52.7(a)(1) (stating that relator must file with petition "a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding"); *In re Smith*, 263 S.W.3d 93, 96 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (party seeking mandamus relief with regard to ministerial duty to rule on motion must show that (1) the trial court had a legal duty to act, (2) there was a demand for performance, and (3) there was a refusal to act). Relator may write to the Harris County District Clerk to request the cost info for a copy of the reporter's record for his trial. *See In re Bonilla*, 424 S.W.3d 528, 534 (Tex. Crim. App. 2014); *see also In re Artiga*, No. WR-84,603-01, 2016 WL 3094322, at *2 (Tex. Crim. App. May 25, 2016) (Johnson, J., concurring) (not designated for publication).

PER CURIAM

Panel consists of Chief Justice Radack and Justices Keyes and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).