

Denied and Opinion Filed June 9, 2020



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-20-00544-CV

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IN RE EMMIT BRAGER, Relator

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Original Proceeding from the Criminal District Court No. 2  
Dallas County, Texas  
Trial Court Cause No. F80-08698-MI

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**MEMORANDUM OPINION**

Before Justices Schenck, Partida-Kipness, and Nowell  
Opinion by Justice Partida-Kipness

In this original proceeding, Emmit Brager has filed (1) a motion for leave to file a petition for writ of mandamus and (2) a petition for writ of mandamus requesting the Court to compel the trial court to rule upon a pending motion. Because it is not necessary to request leave of court to file a petition for writ of mandamus, we deny the motion for leave as moot. *See* TEX. R. APP. P. 52.1. Because relator's petition is insufficient to support relief, we deny the petition for writ of mandamus.

To obtain mandamus relief compelling a trial court to rule on his motion, relator must show (1) the trial court had a legal duty to rule on the motion, (2) relator

requested a ruling, and (3) the trial court failed or refused to do so. *In re Prado*, 522 S.W.3d 1, 2 (Tex. App.—Dallas 2017, orig. proceeding). The relator must provide the court with a record sufficient to establish his right to mandamus relief. TEX. R. APP. P. 52.3(k), 52.7(a); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). A petition seeking mandamus relief must also include a certification stating that the relator “has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.” TEX. R. APP. P. 52.3(j).

Here, relator has not certified the petition as required by rule 52.3(j) and has not provided the documents required by rules 52.3(k) and 52.7(a). Relator has not established his right to mandamus relief. Accordingly, we deny the relief requested.

/Robbie Partida-Kipness/  
ROBBIE PARTIDA-KIPNESS  
JUSTICE

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