

Opinion issued June 30, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00384-CR

IN RE DEVIN PAUL COLE, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Devin Paul Cole, has filed a pro se petition for writ of mandamus, seeking to compel the trial court to “perform a ministerial function” in connection with several purported filings or other requests of relator.¹

¹ Relator’s petition does not state with specificity the “ministerial function” he seeks to compel from the trial court. Relator’s petition references several motions he purports to have filed, as well as other requests relator purportedly made, during March and April 2020, including: (1) relator’s “Application for a Pre-Trial Writ of Habeas Corpus Seeking an In Camera Hearing and Production of All HPD-Body Cam, Dash Cam, Backseat Cam Video Recorded Footage from 02/27/20”;

We dismiss relator’s petition for want of jurisdiction.²

In his petition for writ of mandamus, relator represents that he requested that he “be allowed representation by [c]ounsel,” but, according to relator, despite this request, he is not represented by counsel. However, a review of the record establishes that relator is represented by court-appointed counsel pursuant to an Order Appointing Counsel entered by the trial court on March 2, 2020.

Accordingly, relator’s pro se petition for writ of mandamus presents nothing for this Court to review because a criminal defendant is not entitled to hybrid representation. *See Patrick v. State*, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995) (because appellant was represented by counsel and was not entitled to hybrid

(2) relator’s “Motion for Production of Any and All Favorable, Exculpatory and Mitigating and Exon[e]rating Electronically Recorded Video Evidence from HPD’s Body Cams, Dash Cams, and Backseat Cams”; (3) relator’s “Michael Morton Act Motion to Compel Immediate Preservation and Full Mandatory Disclosure of Houston Police Department (HPD) Body Cam, Dash Cam, Back Seat Cam Video and Audio Electronically Recorded Evidence Relevant to Actual Innocence”; (4) relator’s request for “Video Surveillance from the Katz Restaurant on Westheimer of the Customer Back Parking Lot”; (5) relator’s request for access to the “911 Call Recording[s] by Complainant to Police (HPD) by Evan Arisan”; and (6) relator’s request for evidence that a “real Grand Jury” was convened to consider his indictment. The mandamus record does not include any of the above referenced filings or other evidence to support that relator filed or otherwise brought the requests to the attention of the trial court. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding) (“Indeed, one can hardly be faulted for doing nothing if he were never aware of the need to act.”).

² The underlying case is *The State of Texas v. Devin Paul Cole*, Cause No. 1666250, in the 184th District Court of Harris County, Texas, the Honorable Abigail Anastasio presiding.

representation, appellant’s pro se supplemental brief presented nothing for review); *Gray v. Shipley*, 877 S.W.2d 806, 806 (Tex. App.—Houston [1st Dist.] 1994, no writ) (per curiam) (overruling pro se motion for leave to file mandamus petition because relator was represented by appointed trial counsel and not entitled to hybrid representation).

Accordingly, we dismiss relator’s petition for writ of mandamus for want of jurisdiction.³ All pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Keyes, Kelly, and Landau.

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

³ This Court has previously dismissed relator’s similar mandamus petition on the same ground. *See In re Devin Paul Cole*, Nos. 01-17-00338-CR, 01-17-00342-CR, 2017 WL 2178889, at *1 (Tex. App.—Houston [1st Dist.] May 18, 2017, orig. proceeding) (mem. op., not designated for publication).