

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

CR-18-0690

Ex parte William Benjamin Darby

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama v. William Darby)

Madison Circuit Court No. CC-183238

ORDER

On April 18, 2019, William Benjamin Darby filed a petition for a writ of mandamus seeking reversal of the Madison Circuit Court's denial of Darby's motion for immunity under § 13A-3-23, Ala. Code 1975. Darby included three attachments with his petition: a copy of the indictment, a copy of his motion for immunity, and a copy of the trial court's order denying his motion for immunity. The petition summarizes the evidence that was presented at a hearing on the immunity motion and states that "[a] transcript of the testimony summarized above can be obtained from the court reporter." (Petition, p. 13.)

Rule 21(a)(1)(E), Ala. R. App. P., requires a petition for a writ of mandamus to include the "parts of the record that would be essential to an understanding of the matters set forth in the petition." See, e.g., Ex parte Lucas, 165 So. 3d 618, 621 (Ala. Civ. App. 2014). It is not this Court's responsibility to request additional materials to determine whether a petitioner is entitled to mandamus relief.

"An appellate court is confined in its review to the appellate record [;] that record cannot be "changed, altered, or varied on appeal by statements in briefs of counsel," and the court may not "assume error or presume the existence of facts as to which the record is silent." Quick v. Burton, 960 So. 2d 678, 680-81 (Ala. Civ. App. 2006). Accordingly, when, as in this case, "oral testimony is considered by the trial court in reaching its judgment and that testimony is not present in the record as either a transcript or Rule 10(d), A[la]. R. A[pp]. P., statement, it must be conclusively presumed that the testimony [was] sufficient to support the judgment." Rudolph v. Rudolph, 586 So. 2d 929, 930 (Ala. Civ. App. 1991)."

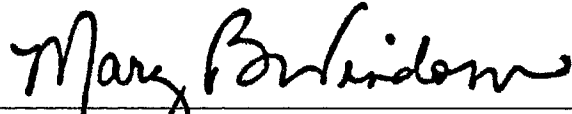
Ex parte Lucas, 165 So. 2d at 621 (quoting Beverly v. Beverly, 28 So. 3d 1, 4 (Ala. Civ. App. 2009)).

Based on the materials before us, Darby has not demonstrated that he has a clear legal right to the requested relief.

This petition for a writ of mandamus is due to be, and is hereby, **DENIED**.

Windom, P.J., and Kellum, McCool, Cole, Minor, JJ., concur.

Done this 10th day of May, 2019.



MARY B. WINDOM, PRESIDING JUDGE

cc: Hon. Donna S. Pate, Circuit Judge
Hon. Debra Kizer, Circuit Clerk
Robert L. Broussard, District Attorney
Timothy R. Gann, Assistant District Attorney
Timothy Jay Douthit, Assistant District Attorney
Robert B. Tuten, Attorney
Office of the Attorney General