

Court of Appeals of the State of Georgia

ATLANTA, October 06, 2026

The Court of Appeals hereby passes the following order:

A27O0015. LEON FRANSCECO BENJAMIN v. TIANA P. GARNER, CLERK OF SUPERIOR COURT.

Leon Fransceco Benjamin has filed a petition for a writ of mandamus against Tiana P. Garner, the Gwinnett County Superior Court Clerk. Benjamin seeks an order from this Court directing Garner to either (1) certify and transmit the records associated with notices of appeal that he filed on August 5, 2026, and August 13, 2026, or (2) immediately certify the specific cause preventing transmission under OCGA § 5-6-43(a).¹ He makes this request despite the fact that the superior court has a hearing presently scheduled for November 19, 2026, to determine whether to dismiss his August 5 appeal based on his failure to pay costs.² For the reasons that follow, we dismiss this petition.

“Generally, the superior courts of this state have the power, in proper cases, to issue process in the nature of mandamus, . . . and hence the need to resort to the

¹ OCGA § 5-6-43(a) provides that it is the duty of the trial court clerk to prepare and transmit the transcript of evidence and proceedings to the appellate court within five days after the date of filing the transcript. “If for any reason the clerk is unable to transmit the record and transcript within the time required in this subsection or when an extension of time was obtained under [OCGA § 5-6-39], [she] shall state in [her] certificate the cause of the delay and the appeal shall not be dismissed.” OCGA § 5-6-43(a).

² Benjamin filed an affidavit of indigency below, but the trial court refused to waive his appellate costs.

appellate courts for such relief by petition filed in the appellate courts will be extremely rare.” *Brown v. Johnson*, 251 Ga. 436, 436 (306 SE2d 655) (1983), disapproved in part on other grounds, *Arnold v. Alexander*, 321 Ga. 330, 336(1) (914 SE2d 311) (2025). See also Ga. Const. of 1983, Art. VI, Sec. I, Par. IV. “The writ of mandamus is properly issued only if (1) no other adequate legal remedy is available to effectuate the relief sought; and (2) the applicant has a clear legal right to such relief.” *Bibb County v. Monroe County*, 294 Ga. 730, 734(2) (755 SE2d 760) (2014). Furthermore, as explained by the Supreme Court of Georgia, an appellate court’s authority to issue such writs “is connected only to such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. It does not grant jurisdiction to [the appellate court] to issue process as an original matter wholly unconnected to its appellate jurisdiction.” *Arnold*, 321 Ga. at 334(1) (quotation marks omitted). Thus, “it will be an ‘extremely rare’ circumstance that would require a party to seek a writ of mandamus in [an appellate court] in the first instance.” *Id.* at 335(1) n.6.

Here, aside from two mandamus petitions he has filed in separate matters,³ Benjamin has no appeals currently pending in this Court. Moreover, his petition contains no indication that he has no other legal remedy to effectuate the transmission of the records in his appeals or that he has a clear right to such relief because, for example, he is indigent. See *Bibb County*, 294 Ga. at 734(2). We thus conclude that this case does not present one of the “extremely rare” instances in which this Court will grant mandamus relief. See generally *Arnold*, 321 Ga. at 335(1) & n.6.

Benjamin should seek mandamus relief in the superior court in the first instance and, if dissatisfied with the result, he may seek appeal to this Court. See, e.g., *Allen v. Shepherd*, 368 Ga. App. 156 (889 SE2d 347) (2023) (reversing superior court’s dismissal of petition for mandamus because municipal court clerk had duty to transmit appeal to superior court). While Benjamin asserts that attempting to file a mandamus

³ See Case No. A27O0014, *Leon Fransceco Benjamin v. Clerk of the Superior Court of Clayton County, Georgia*; A27O0016, *Leon Fransceco Benjamin v. Tiana P. Garner, Clerk of Superior Court, Gwinnett County*.

petition in the superior court would be futile because the superior court clerk has not transmitted the appeals already filed, that conclusory assertion merely assumes what it seeks to establish. At this juncture, there is no basis for this Court to exercise its jurisdiction and issue mandamus relief in this matter. See Ga. Ct. App. R. 40(c); *Arnold*, 321 Ga. at 335(1) & n.6; *Bibb County*, 294 Ga. at 734(2). For these reasons, this mandamus petition is hereby DISMISSED.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 10/06/2026

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Christina Bailey Smith

, Clerk.