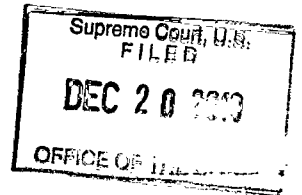


No. 19-7156

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Robert E. Clayborne — PETITIONER
(Your Name)

Warden of the —→ vs. Nebraska Tecumseh Corrections
Brad Hansen — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Johnson County District Court of Nebraska
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

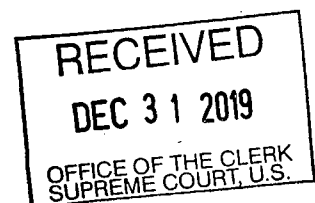
PETITION FOR WRIT OF CERTIORARI

Robert E. Clayborne
(Your Name)

P.O. Box 900
(Address)

Tecumseh Nebraska 68450
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

Did the Johnson County District Court commit Error when it ruled the petitioners allegations set forth in his petition for writ of habeas corpus are not jurisdictional defects and then ordered that the petition for writ of habeas corpus be denied?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A	<i>Decision of the State Court of Appeals</i>
APPENDIX B	<i>Decision of the State Trial Court</i>
APPENDIX C	<i>Decision of the ^{State} Supreme Court Denying Review</i>
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

State v. George, 3 Neb. App. 354 (1995)
In Re Walker, 61 Neb. 803 (1901)

5.

STATUTES AND RULES

3.

Nebraska Statute 29-2801
Nebraska Statute 28-1205

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is CASE NO.

☐ reported at A-19-000677; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Trial Court court appears at Appendix B to the petition and is

☒ reported at CASE NO. CZ 19-15; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

The State ~~and~~ Highest Court has failed to answer a substantial federal question and this petitioner is entitled this question be answered by the US Supreme Court under this jurisdiction. This Court is mandated under this jurisdiction to answer such Federal Question of law.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Right to a writ of habeas corpus and the Privilege shall not be suspended Article I, Section 9, of the US Constitution.

2. State Court Convictions and Sentence without Subject Matter and personal jurisdiction violates the 13th Amendment to the US Constitution.

3. State Constitution provides for remedy of habeas corpus Neb Constitution art 1, 8, Neb Constitution art 5, § 2

4. In a case of a prisoner held pursuant to a judgment of conviction, habeas corpus is available as a remedy only upon showing that a judgment is void. Neb. Statute 29-2801

5. A judgment is void and not merely voidable if the court rendering it lacked personal or subject matter jurisdiction or otherwise lacked a legal basis for the judgment. Neb. Rev Statute 29-2801

6. Defendant must commit an underlying Felony or predicate Felony before he or she can be convicted of use of a weapon to commit a Felony Neb. Rev. Statute 28-1205

7. In order for one to be convicted of ~~use~~ using a weapon to commit a Felony the state must prove the element of the crime including that a Felony was committed ~~it~~ To prove beyond a reasonable doubt that a Felony was committed, the state must prove every element of the particular Felony beyond a reasonable doubt. Neb. Rev. Statute 29-2801

8. Defendant acquitted of underlying Felony ~~can~~ cannot be convicted of use of a weapon to commit that Felony

STATEMENT OF THE CASE

On May 21, 2012²⁰¹² Lancaster County District Court Convicted this petitioner in a plea proceeding of 2nd Degree Assault in violation of Nebraska Statute 28-309, and Use of a weapon to commit a Felony to wit: Terroristic Threats: violation of Nebraska Statute ~~28-1205(1)(B)~~^{28-1205(1)(B)}. No transcript of the Lancaster County Court proceedings was filed with the District Court Clerk.

The petitioner was originally charged with 2nd degree Assault²⁸⁻³⁰⁹, Terroristic Threats 28-311.01 Use of a Weapon to commit a Felony to wit: Terroristic Threats Nebraska Statute 28-1205(1)(B) and possession of a weapon by prohibited persons. Nebraska Statute 28-1206(3)(A); But pursuant to a plea agreement prosecutors dismissed the terroristic threats charge and possession of a weapon ~~by a prohibited person~~ by a prohibited person.

The judge found the petitioner guilty of Second Degree assault in violation of Nebraska Statute and Use of a Weapon To wit Terroristic Threats in violation of Nebraska Statute 28-1205(1)(B)

On February 21, 2019 the petitioner filed a verified petition for writ of habeas corpus in the Johnson County ^{District} Court claiming that he was entitled to a writ of habeas corpus because the Lancaster County District Court Criminal judgment against him was void because that District Court was without subject matter and personal jurisdiction against him in the State Criminal proceedings against him because (1) He was convicted of use of a weapon to commit a felony to wit terrorist threats without being convicted of the original charge of Terrorist threats as required by Nebraska Statute 28-1205(1)(b) (2) The county court transcript was not ~~be~~ filed with the Lancaster County District Court Clerk. On June 26 2019 The Johnson County ^{District} Court denied the petition for writ of habeas corpus, claiming the petitioners allegations are not jurisdiction defects.

On Sept 26 2019 The Nebraska Court of Appeals affirmed the order denying the Petition for Writ by the Lower District Court

On 10/1/2019 The Nebraska ~~Court~~ Supreme Court denied further Review

This mandate appeal follows

REASONS FOR GRANTING THE PETITION

1. In applying *State v. George*, 3 Neb. App. 354 (1995) to a claim based on the Lancaster County District Court was without jurisdiction to impose the sentence for use of a weapon to commit a felony to wit: terroristic threats without being convicted of terroristic threats in the ^{state} criminal proceeding against him in violation of the 13th amendment, The Johnson County District Court erroneously ruled that the petitioner's allegations was not jurisdictional defect and denied the petitioner his right to a writ of habeas corpus in violation of Article I, Section 9 of the US Constitution.
2. In applying *In re Walker*, 61 Neb. 803 (1901) to a habeas claim based on the Lancaster County District Court was without jurisdiction over the subject matter and persons over the petitioner in the State Criminal proceedings against him in violation of the ^{13th Amendment} US Constitution, ~~the court ruled that the petitioner's allegations were not jurisdictional defects and denied the petitioner his right to a writ of habeas corpus in violation of Article I, Section 9 of the US Constitution because no county court transcript of the proceedings was filed in the District Court of Lancaster, the Johnson County District Court erroneously ruled that the petitioner's allegations was not jurisdictional defects and denied the petitioner his right to a writ of habeas corpus in violation of Article I, Section 9 of the US Constitution.~~

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert E. Clayborne

Date: Dec 15, 2019