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19-8501
CASE No. _____

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES
FOR THE EIGHTH JUDICIAL CIRCUIT

IN RE JIMMY L. LIVINGSTON,

PETITIONER,

vs.

STATE OF NEBRASKA,

RESPONDENT.

NEBRASKA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

JIMMY L. LIVINGSTON-PETITIONER PRO SE.,
N.D.C.S. No. 87535
4201 S. 14th Street
Lincoln, Nebraska 68502

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IN THE SUPREME COURT OF THE UNITED STATES

FOR THE EIGHTH JUDICIAL CIRCUIT

In Re JIMMY L. LIVINGSTON,	)	Case No. _____.
	)	
Petitioner,	)	
	)	
v.	)	PETITION FOR WRIT OF CERTIORARI
	)	
STATE OF NEBRASKA,	)	
	)	
Respondent.	)	

COMES NOW the Petitioner, Jimmy L. Livingston, pro se., in the above-captioned cause pursuant to 28 U.S.C.A. U.S. Sup. Ct. Rule 12, (2013) and petitions this honorable court, for an order, and disposition on the merits, for the following reasons:

JURISDICTION

1. The petitioner believes this honorable court has the proper jurisdiction over this matter pursuant to 28 U.S.C.A. § 1651 (a), (Reissue 1994), and;

2. The petitioner believes this court has the proper jurisdiction over this matter pursuant to the U.S. Const. Art. III, § 2., and;

3. The petitioner believes this honorable court has the proper jurisdiction over this matter in State Of Nebraska v. Jimmy L. Livingston, in the Nebraska Supreme Court, Case Nos. S-19-0322, or A-19-0322, on or about the 29th day of January, 2020, on Petition For Further Review Denied, and;

QUESTIONS TO BE CONSIDERED

1. Did the Nebraska Supreme Court, in Case Nos. S-19-0322, or A-19-0322, on or about the 29th day of January, 2020, cause:

a. Abuse Of Discretion-when it denied Further Review, of the Nebraska Court OF Appeals, Case No. A-19-0322, on or about the 25th day of November, 2019, that "affirmed" the lower tribunals "order" without concluding or determining the validity of the document(s) in question, that is instrumental and collateral to the court's jurisdiction in finding the matter in question void or voidable?

b. Reversible Error-when it denied Further Review, of the Nebraska Court Of Appeals, Case No. A-19-0322, on or about the 25th day of November, 2019, that "affirmed" the lower tribunals "order" denying evidentiary hearing, or finding the matter frivolous or malicious, or able to pay the initial filing cost's of the proceedings upon its discretion pursuant to Neb. Rev. Stat. § 25-2301.02 (1), (a), (b), (Reissue 2016)?

c. Plain Error-when it denied Further Review, of the Nebraska Court OF Appeals, Case No. A-19-0322, on or about the 25th day of November, 2019, that "affirmed" the lower tribunals "order" the insufficiency of the material facts, and hearing on or about the 1st day of March, 2019, in the hearing on the

plaintiff's "Response And Motion To Deny Evidentiary Hearing And Motion For Postconviction Relief" before the Lancaster County District Court, Case No. CR 17-1541, on or about the 25th day of November, 2019, that "affirmed" the lower tribunals "order" and placed a presumption that the allegations to the validity of the document(s) in question, and that court's jurisdiction on those document(s) are sufficiently raised to proceed with the postconviction motion for relief?

PARTIES TO THE PROCEEDINGS

1. The petitioner is Jimmy L. Livingston, proceeding both pro se., and in forma pauperis, and;

2. The petitioner is an inmate at the Nebraska State Penitentiary, located at: 4201 S. 14th Street, Lincoln, Nebraska 68502., and;

3. The respondent State Of Nebraska, is the plaintiff in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Lancaster County District Court, Case No. CR 17-1541, on or about the 24th day of April, 2018, and is represented by the Nebraska Attorney General: Douglas J. Peterson, at; 2115 State Capitol Building, Lincoln, Nebraska 68509-8920., and;

PROCEEDINGS IN STATE COURT

1. The Deputy County Attorney, Eric S. Miller, on or about the 27th day of November, 2017, submitted for filing a Criminal Complaint, against the above-petitioner, into the

Lancaster County Court, Case No. CR 17-16040, and allegedly waived his right to preliminary hearing, on or about the 5th day of December, 2017, upon a plea agreement, bound over to the Lancaster County District Court, on arraignment., and;

2. The Deputy County Attorney, Eric S. Smith, on or about the 20th day of December, 2017, submitted for filing a Information, in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Lancaster County District Court, Case No. CR 17-1541, and the court, on or about the 24th day of April, 2018, consequently, found the above-petitioner guilty and made a judgement of conviction and commitment, sentences, and any orders relating thereto., and;

3. The petitioner filed a direct appeal on that judgement in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Nebraska Court Of Appeals, Case No. A-18-0485, and that court sustained the State's motion for summary affirmance and mandated on the 15th day of October, 2018., and;

4. The petitioner filed a Motion: Postconviction for relief on or about the 27th day of November, 2018, in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Lancaster County District Court, Case No. CR 17-1541, on the 1st day of March, 2019, the court sustained the State's motion to deny

evidentiary hearing, Filing No.5, which directly relates to defendant's verified motion for postconviction relief, Filing No.7, in that hearing. On the 4th day of March, 2019, the court made an "order" "Accordingly, the court finds that the state's motion to deny evidentiary hearing, Filing No.7, should be, and hereby is sustained and the defendant's motion for postconviction relief, Filing No.6, should be, and hereby is overruled, and dismissed without further hearing."Without first determining, whether or not the defendant can pay for the postconviction proceedings, or qualifies for the in forma pauperis status, application, and whether or not his motion for postconviction relief is frivolous or malicious within it's discretion., and;

5. The petitioner submitted for filing a "Notice Of Intent To Appeal" on or about the 1st day of April, 2019, into the Lancaster County District Court, Case No. CR 17-1541, in the matter of State Of Nebraska v. Jimmy L. Livingston, and filed "Brief Of Appellant" on or about the 17th day of May, 2019, in the Nebraska Court Of Appeals, Case No. A-19-0322, on the 25th day of November, 2019, that court made a "MEMORANDUM OPINION AND JUDGEMENT ON APPEAL" and "affirmed" the lower tribunals decision., and

6. The petitioner submitted for filing a Petition For Further Review, on or about the 18th day of December, 2019, in the Nebraska Supreme Court, Case No. S-19-0322, or A-19-0322, that court made an "order" Petition of appellant for further review denied, in the matter of State Of Nebraska v. Jimmy L. Livingston, regarding Lancaster County District Court, Case No. CR 17-1541., and;

BASIS OF JURISDICTION IN THIS COURT

1. The petitioner basis this court's jurisdiction over this matter pursuant to 28 U.S.C.A. § 1257 (a), (Reissue 1988) and State Of Nebraska v. Jimmy L. Livingston, in the Nebraska Supreme Court, Case No. S-19-0322, or A-19-0322, on or about the 29th day of January, 2020., and the following:

a. The Nebraska Court Of Appeals, Case No. A-19-0322, on or about the 25th day of November, 2019, "Order" affirming the lower tribunals "order"., and; (See; Attachment(s) 1-10),

b. The Neb. Rev. Stat. § 25-2301.02 (1), (a), (b), (Reissue 2016) and it's expression of (a) has sufficient funds to pay costs, fees, or security or (b) asserting legal position which are frivolous or malicious, that the courts did not determine prior to this filing., (See; Attachment(s) 2-4, and 3-1) and (See; Attachment(s) 4-1), and;

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

1. The petitioner asserts that in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Lancaster County District Court, Case No. 17-1541, on or about the 29th day of November, 2018, in the Motion: Postconviction, on page 3, I Statement Of Facts, subparagraph 6, line 22-24, he did raise a fact involving his constitutional rights being infringed by the State, by that court., and;

2. The petitioner asserts that in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Nebraska Court Of Appeals, Case No. A-19-0322, on or about the 17th day of May, 2019, in his Appellant's Brief, on page 4, Scope Of Review, line 4-8, he raised issues relating to constitutional provisions that are believed to be infringed., and;

3. The petitioner asserts that in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Nebraska Court Of Appeals, Case No. A-19-0322, on or about the 17th day of May, 2019, in his Appellant's Brief, on page 6, Assignments Of Error, III, lines 23-25, raising constitutional provisions believed to have been infringed by the court, and the State., and;

4. The petitioner asserts that in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Nebraska Supreme Court, Case No. S-19-0322, or A-19-0322, on or about the 18th day of December, 2019, in his Petition For Further Review and Memorandum Brief In Support, on page 4, and subparagraph 8, line 10-11, he raised constitutional provisions relating to due process and equal protection pursuant to Ne. Const. Art. 1, § 3., and page 5, Cont. Subparagraph 9, line 7-8, to the right of the Confrontation Clauses of Ne. Const. Art. 1, § 11., and;

The above-paragraph(s) are in support of the foregoing, of each other, and below;

STATEMENT OF THE CASE

This petitioner, Jimmy L. Livingston, pro se., has filed this Writ Of Certiorari, because of the Nebraska Supreme Court's "order" denying relief on Petition For Further Review, on or about the 29th day of January, 2020, without reason, and an appealable ground, of the Nebraska Court Of Appeal's "Memorandum Opinion And Judgement On Appeal" on or about the 25th day of November, 2019, affirming the lower tribunal in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Lancaster County District Court, Case No. CR 17-1541, on or about the 4th day of March, 2019, is believed to have been made by abuse of discretion, reversible error, and plain error, and petitions this honorable court for summary disposition on the merits.

ARGUMENT

The petitioner argues that the Nebraska Supreme Court, did not provide him with grounds or information that could be raised for review, or this Writ Of Certiorari. However, the petitioner contends that there is sufficient material evidence that does suggest that the Nebraska Court Of Appeals, Case No. A-19-0322, on or about the 25th day of November, 2019, "Memorandum Opinion And Judgement On Appeal" (1) the district court misled him into believing his postconviction motion was sufficient by conducting a hearing on the State's motion to deny his motion for postconviction relief; and (2) the district court erred in denying his motion for postconviction relief without an evidentiary hearing. For the reasons set forth herein, we affirm." Is in error for the following reasons:

1. The petitioner filed his motion for Postconviction Relief on or about the 1st day of April, 2019, as evidenced by, see; Attachment 3-1, and not on or about December, 2016, as expressed by the Nebraska Court Of Appeal's "Memorandum Opinion And Judgement On Appeal" page -2-, line 7., and;

2. The petitioner alleges that if the Standard Of Review on postconviction proceedings, reviewed de novo, alleging sufficient facts to demonstrate a violation of his or her constitutional rights or that the record and files affirmatively

show that the defendant (appellant herein) is not entitled to postconviction relief is applicable, the appellant asserts that presumption to the facts of the case brought, e.g. STATE v. KIPF, Case No. 88-974, January 19, 1990, 234 Neb. 227, 450 N.W.2d 397, (1990), at:

[HN 17],

"[P]resumption" is assumption of fact from another fact or group of facts found or otherwise established, while "prime facie proof" is evidence sufficient to submit issue to fact-finder; presumption is utilized by fact-finder whereas prime facie proof and correspondingly, prime facie case, is utilized by a court for legal consideration of whether matter is submissible to fact-finder notwithstanding request for direct verdict or even dismissal.] (See, also; In Re Claims Against Pierce Elevator, Case No. S-14-899, Filed September 11, 2015, 291 Neb. 798, 868 N.W.2d 781, U.C.C. Rep.Serv.2d 745, (2015)., and;

that the presumption of the invalidity of the document(s) in question, should be considered to the presumption that they are indeed invalid, as e.g. THOMPSON v. BEASLEY, Case No. 4:14-CV-00068 DMB-JMV., Signed July 13, 2015, 309 F.R.D. 236, 98 Fed.R.Serv.3d 317, (2015), at:

[HN 5],

"[U]nfortunately "the distinction between the application of law to fact and legal conclusion is not always easy to draw."]

However, e.g. B/E AEROSPACE, INC. v. ZODIAC AEROSPACE, Case No. 2:16-CV-0417-JRG-RSP, Signed 3/14/2017, 2017 WL 3671368, (2017), at:

[HN 1, paragraph 4], at:

"[T]he court agrees with this general conclusion, and likewise agrees with Thompson's strict definition of "legal conclusion" because requests for admissions efficiently narrow issues for trial." (Underlined for emphasis.)

At the heart of this matter it is contended that the court cannot act sua sponte, these document(s) does not appear to be drafted in accordance to law, and does not appear to hold the person making the allegations liable under penalty of perjury, e.g. 28 U.S.C.A. § 1746 (2), (1976), from it's initial filing, and proceeded upon, e.g. RADIL v. SAWYER, 85 Neb. 235, 122 N.W. 980, 1909 Neb. LEXIS 339, (1909), at:

[HN 4],

"[T]he test of jurisdiction is whether a court had the power to enter upon the inquiry, not whether its methods were regular, its findings correct, or its conclusions in accordance to law.]", and;

Likewise, the "jurisdictional document" must be filed in accordance to law, e.g. MCGURK v. ABRAMSON, Case No. A-94-645, November 14, 1995, 1995 WL 766407, (1995), [HN 4], in order for the court, to enter upon it's inquiry, and also see, e.g. LANGFORD v. STATE, Case No. 24655, December 31, 1925, 114 Neb. 207, 206 N.W. 756, (1925), or it's a jurisdictional defect, the court did not have the authority to enter upon its inquiry., and;

Consequently, the petitioner asserts that the Criminal Complaint, submitted for filing on or about the 27th day of November, 2017, was contrary to Neb. Rev. Stat. § 23-1201 (1), (Reissue 2017) and unverified, to protect his right to confrontation against his accuser(s) infringing his Ne. Const. Art. 1, § 11., and the U.S. Const. Amend. 6., clauses, and;

The Lancaster County Court, could not have proceeded on preliminary examination pursuant to Neb. Rev. Stat. § 25-504, and 25-505, 25-506 on preliminary hearing, on the above paragraph, complaint that appears to have been invalid or void, in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Lancaster County Court, Case No. CR 17-16040, on or about the 25th day of November, 2017, and to bound over to Lancaster County District Court, Case No. CR 17-1541, on or about the 14th day of December, 2017, contrary to Neb. Rev. Stat. § 29-1607 (Reissue 1980), as his preliminary examination was not provided by law, e.g. MORROW v. STATE, Case No. 31232, November 21, 1941, 140 Neb. 592, 300 N.W. 843, (1941), at:

[HN 2],

"[T]o confer jurisdiction on magistrate in a criminal case, the complaint must be filed in compliance with statute requiring complaint in writing under oath. Comp. St. 1929, § 29-404.]", and;

would also have to be in compliance with Neb. Rev. Stat. § 23-1201 (1), (Reissue 2017), law as expressed.

Likewise, the petitioner asserts that the Nebraska Supreme Court, knew or was aware that Neb. Rev. Stat. § 29-1603 (1), (Laws 2011, LB 669, § 2, eff. August 27, 2011) is as amended ambiguous, as ripping away the statutory jurisdictional component, doesn't protect a criminal defendant's compulsory process rights, and hold those under the pains of penalty of perjury, and leaves the Information, as an unsworn document, e.g. 28 U.S.C.A. § 1746 (2), (1976)., and does provide for a jurisdictional question, e.g. SMITH v. STATE, Case Nos. 34517, 34604, November 6, 1959, 169 Neb. 199, 99 N.W.2d 8, (1959), at: [HN 2],

"[D]effects or omissions in an indictment or information which are of such fundamental character as to render indictment or information wholly invalid are not subject to waiver by accused, and failure to raise objections in trial court does not constitute a bar to right of defendant to present it on review by Supreme Court.]" (Emphasis added underlined)

This piece of information would have been vital to the defendant's defense, as his word against the accusers, who did not swear to the allegations raised, upon a document, that does not secure the safeguards of both accuser and the accused, therefore, it would be reasonable to conclude, that the defendant (petitioner herein) was induced to plead to his injury, and unsuspectedly waived his rights within a plea agreement, as evidenced by the Supreme Court affirming the Nebraska Court Of Appeals, and the lower tribunal's decision,

e.g. STATE v. PAUL, Case No. S-97-1081, April 6, 1999, 256 Neb. 669, 592 N.W.2d 148, (1999), at:

[HN 3],

"[T]o support a finding that a plea of guilty has been entered freely, intelligently, voluntarily, and understandingly, a court must inform a defendant concerning: (1) the nature of the charge; (2) the right to assistance of counsel; (3) the right to confront witnesses against the defendant; (4) the right to a jury trial; and (5) the privilege against self-incrimination; the record must also establish a factual basis for the plea and the defendant knew the range of the penalties for crime charged.]" (Emphasis added as underlined)

and could not have known, during the time of agreeing, to the plea agreement that the document(s) in question were not either binding, nor could be held to make those signing them to the pains of penalty of perjury, e.g. STATE v. SORENSEN, Case No. S-11-597, May 25, 2012, 283 Neb. 932, 814 N.W.2d 371, (2012), at:

[HN 4],

"[F]or Confrontation Clause purposes, "testimony" is typically a solemn declaration or affirmation made for purpose of establishing or proving some fact. U.S.C.A. Const. Amend. 6.]" (Emphasis added underlined)

and this petitioner, did not know that the document(s) in question were made, without the estential element(s) necessary, e.g. MCGURK v. ABRAMSON, and LANGFORD v. STATE supra. Therefore, did not freely, intelligently, voluntarily, and understaningly, waive his rights, nor was he under any duty to do so, e.g. SMITH v. STATE, supra.

CONCLUSION

The petitioner has brought a question of law to the courts, and has been denied the fundamental rights granted to a pro se., litigant, under fundamental fairness doctrine, to proceed to a hearing and determine the validity or invalidity of the document(s) in question, and determine the court's jurisdiction over the subject matter, and that over the person in the matter of State Of Nebraska v. Jimmy L. Livingston, in the Lancaster County District Court, Case No. CR 17-1541, as Mandated on or about the 15th day of October, 2018, and for which petitioner filed a motion for postconviction relief, on or about the 27th day of November, 2018, that it is his belief and understanding that the document(s) in question are invalid, do not meet the statutory element(s) or requisites to be deemed lawful, and valid, and the court should find the matter to be void, for want of jurisdiction, and asks this honorable court, to make an order, on Writ Of Certiorari, for a judgement, on the above matter, finding the lower tribunals did cause:

(1) Abuse Of Discretion; (2) Reversible Error; (3) Plain Error; when it denied Further Review, and affirmed the lower tribunals order(s).

Dated on this 15 day of April, 2020.

Submitted By: Jimmy Livingston
Jimmy L. Livingston, Petitioner

PRAYER FOR RELIEF

Wherefore, the petitioner prays that this honorable court, will find that the courts, caused (1) Abuse Of Discretion; (2) Reversible Error; (3) Plain Error; when affirming the lower tribunals order, sustaining the state's motion to deny an evidentiary hearing, and to deny defendant's motion for postconviction relief, and overrruled, and dismissed without further hearing, and grant the relief of a summary disposition on the merits, and any other relief this court finds just and humane.

Dated on this 15 day of April, 2020.

Submitted By: Jimmy Livingston
Jimmy L. Livingston, Petitioner
N.D.C.S. No. 87535
4201 S. 14th Street
Lincoln, Nebraska 68502

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

VERIFICATION

I, Jimmy L. Livingston, petitioner pro se., in the above-captioned Writ Of Certiorari, and does hereby verify I have read the foregong, and believe upon information and belief, and as to the information I believe them to be true. I certify that the foregoing is true and correct under penalty of perjury.

Dated on this 15 day of April, 2020.

Submitted By: Jimmy Livingston
Jimmy L. Livingston, Petitioner
N.D.C.S. No. 87535
4201 S. 14th Street
Lincoln, Nebraska 68502

Continued from page 16,

Taken, Subscribed and duly sworn to, upon oath, before
me a Notary Public on this 12 day of April, 2020.

NOTARY PUBLIC

VERIFICATION OF CERTIFICATE OF SERVICE

I, Jimmy L. Livingston, petitioner pro se., in the
foregoing Petition For Writ Of Certiorari, verify that I did
cause on this 12 day of April, 2020, a true and
correct copy hereof, and does certify that I did send a copy
thereof to the counsel for the appellee's by sending same by
U.S. Postal Services, First Class Mail, Postage Prepaid, to:
Assistant Attorney General Siobhan E. Duffy, at; 2115 State
Capitol Building, Lincoln, Nebraska 68509-8920. And attachments.

Submitted By:

Jimmy L. Livingston
Jimmy L. Livingston, Petitioner
N.D.C.S. No. 87535
4201 S. 14th Street
Lincoln, Nebraska 68502

Taken, Subscribed and duly sworn to, upon oath, before
me a Notary Public on this 12 day of April, 2020.

Damon P. Gruber
NOTARY PUBLIC

