

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
8TH JUDICIAL CIRCUIT

ABDUR-RASHID MUHAMMAD #73537 — PETITIONER
(Your Name)

VS.

STATE OF NEBRASKA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CLERK OF THE NEBRASKA SUPREME COURT AND NEBRASKA COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ABDUR-RASHID MUHAMMAD # 73537

(Your Name)

P.O. BOX 22500

(Address)

LINCOLN, NE 68542-2500

(City, State, Zip Code)

(402) 471-3161

(Phone Number)

RECEIVED

AUG 18 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner's Petition For Writ Of Habeas Corpus & Emergency Ex Parte Motion For Bond Pending Petition For Writ Of Habeas Corpus, when the Petitioner did show cause of action for his discharge pursuant to Neb. Rev. Stat. § 29-2801?
2. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner an Evidentiary Hearing on the facts that was presented in the Petitioner's Petition? and was it Error to not grant that hearing pursuant to Neb. Rev. Stat. § 29-2805?
3. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, once the Petitioner raised the issue of the fact, that there was a Breach Of Plea Agreement that occurred and thus was " PLAIN ERROR " that leaves the proceedings " VOID AND NULL " which includes the Sentence, Judgment, Conviction and Commitment?
4. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, when the record shows that the District Court Judge had charged the Petitioner with three VOID and UNCONSTITUTIONAL nonexisting Offense's, Indictment's and Information that don't exist on the record, nor was put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, nor did the Petitioner agree to be charged and plead guilty to those three " VOID AND NULL " Offense's, Indictment's & Information?
5. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, when the record reflects that there was no acceptance on the Petitioner's guilty plea to that VOID and UNCONSTITUTIONAL " COUNT IV " (ORIGINAL INFORMATION).
6. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, when the record reflects

that the Court had accepted the Petitioner's guilty plea on a **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information on that "**COUNT III OF THE SECOND AMENDED INFORMATION**".

7. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, when the record reflects that the Petitioner was never charged with a "**COUNT V**", but the Court is on the record accepting a guilty plea to a "**COUNT V**".

8. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, when the District Court Of Sarpy County, Nebraska lost all Jurisdiction over the subject matter, had no Personal Jurisdiction over the Petitioner and had no Legal Basis to impose any sentence on those three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information, once that Breach Of Plea Agreement rendered everything in the proceedings "**VOID AND NULL**", which does include the Sentence, Judgment, Conviction and commitment.

9. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, when the Commitment order that was given, was **VOID** and **UNCONSTITUTIONAL** because of the Judge's failure to charge the Petitioner with the Correct and only Offense's, Indictment's and Information that exist on the record, and that was put forth on the record, and to what the Petitioner had agreed to and understood that he was going to be charged with?

10. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801, when both of the Petitioner's Trial Counsel and Direct Appeal Counsel was "**Incompetent**" & "**Ineffective**" at a "**Critical Stage**" in a Criminal Proceeding?

11. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner's Motion For Appointment Of Counsel for his Petition For Writ Of Habeas Corpus, when there was a need for effective discovery of the Petitioner's facts that was alleged

in the Petitioner's Petition.

12. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In denying the Petitioner's Emergency Ex Parte Motion For Bond on 03/03/2020 without a stated reason and thus was Arbitrarily and Unreasonably.

13. DID THE DISTRICT COURT JUDGE ROBERT R. OTTE ERROR, In that Erroneous order that was given on 04/06/2020, when the record reflects that the Petitioner isn't Legally Committed on a Sound nor Just Felony Conviction and thus the Petitioner still has that right to bail pursuant to the Provision of Section 9, Art I, of the Constitution.

14. DID THE NEBRASKA COURT OF APPEALS ERROR, when the Petitioner was denied relief by the Court Of Appeals, even-though the Court Of Appeals cannot determine the Constitutionality of a Statute?

15. DID THE NEBRASKA COURT OF APPEALS ERROR, when the Petitioner was denied relief for his Motion For Stipulation Of Appellant For Summary Reversal § 2-107(C) (Reissue 2020), when the Petitioner raised an issue of a " Clear Error " of Law?

16. DID THE NEBRASKA SUPREME COURT ERROR, In denying the Petitioner's Motion For Rehearing And Supporting Brief, when the Petitioner's Brief was sent back to him by mistake and the Petitioner had to remail off his Brief?

17. DID THE NEBRASKA SUPREME COURT ERROR, In denying the Petitioner's Motion To Expand Brief Page Limit for the Petition For Further Review And Memorandum Brief, when the Petitioner advised the Court that he believes that the current page limit of 10 pages can't sufficiently raise the issue relative to the request for Further Review in this matter?

18. DID THE NEBRASKA SUPREME COURT ERROR, In denying the Petitioner's Petition For Further Review, without giving an appealable answer other than " Petition of appellant for further review denied. " ?

19. DID THE NEBRASKA SUPREME COURT ERROR, In denying the Petitioner's Petition For Further Review, when it was warranted in this matter?

20. DID THE NEBRASKA SUPREME COURT ERROR, In denying the Petitioner's Petition For Further Review, when the District Court and the Court Of Appeals proceedings resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the District Court and the Court Of Appeals proceeding?

21. DID THE NEBRASKA SUPREME COURT ERROR, In denying the Petitioner's Petition For Further Review, when the Petitioner did rebut the presumption of correctness by clear and convincing evidence that does show and prove that the Petitioner was charged with three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information by the District Court Judge and thus was a Breach Of Plea Agreement?

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:

THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

575 S. 10TH STREET

LINCOLN, NEBRASKA 68508-2810

THE COURT OF APPEALS FOR THE STATE OF NEBRASKA

2413 STATE CAPITOL

P.O. BOX 98910

LINCOLN, NEBRASKA 68509-8910

THE NEBRASKA SUPREME COURT

2413 STATE CAPITOL

P.O. BOX 98910

LINCOLN, NEBRASKA 68509-8910

Muhammad V. Scott Frakes Et Al., Case No. A-20-0260, Clerk Of The Nebraska Supreme Court And Court Of Appeals. Judgment Pending

Muhammad V. Scott Frakes Et Al., Case No. A-20-0444, Clerk Of The Nebraska Supreme Court And Court Of Appeals. Judgment Pending

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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.

[x] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the NEBRASKA COURT OF APPEALS court appears at Appendix B to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the **DISTRICT COURT OF LANCASTER COUNTY**, Court
appears at Appendix C to the Petition and is
[X] is unpublished.

JURISDICTION

THE DATE ON WHICH THE HIGHEST STATE COURT DECIDED MY CASE WAS 08/04/2020.

A COPY OF THAT DECISION APPEARS AT APPENDIX A.

A TIMELY PETITION FOR FURTHER REVIEW WAS THEREFORE DENIED ON THE FOLLOWING DATE:

08/04/2020, AND A COPY OF THE ORDER DENYING THAT PETITION FOR FURTHER REVIEW

APPEARS AT APPENDIX A.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257(A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A., AMENDMENT V; AMENDMENT IV; AMENDMENT VIII & AMENDMENT XIV

NE. REV. CONST. ART. I, § 9

NEB. REV. STAT. § 29-2801

NEB. REV. STAT. § 29-2805

NEB. REV. STAT. § 2-107(C) (REISSUE 2020)

STATEMENT OF THE CASE

On 02/06/2020 the District Court Judge Robert R. Otte, entered an order denying the Petitioner's Petition For Writ Of Habeas Corpus, Emergency Ex Parte Motion For Bond & Motion For Appointment Of Counsel. The Petitioner timely filed a Notice Of Appeal for that denial. The Petitioner then filed his Brief # A-20-0117 with the Court Of Appeals for the State Of Nebraska and simultaneously filed a Motion For Bond. The Petitioner also filed a Motion For Response To State's Motion For Summary Affirmance And Brief In Support Thereof & a Motion For Stipulation Of Appellant For Summary Reversal § 2-107(C) (Reissue 2020). The Court Of Appeals denied the Petitioner's Motion For Bond on 03/25/2020 and stated: " Motion of appellant for appeal bond denied ". On 06/08/2020 the Court Of Appeals, sustained the Appellee's Motion For Summary Affirmance and over ruled the Petitioner's " motion for stipulation of appellant for summary reversal " pursuant to Neb. Ct. R. App. P. § 2-107(C) (1).

The Court Of Appeals does not have Jurisdiction to decide Constitutionality of a statue, and thus it was Erroneous for the Court Of Appeals to rule on this matter, and it was Erroneous to deny the Petitioner Relief on that statement of " Appellant's petition for writ of habeas corpus alleged facts constituting an improper collateral attack on his conviction and sentence ".

On 06/15/2020 the Petitioner filed a Verified Motion For Rehearing And Supporting Brief with the Supreme Court For The State Of Nebraska. On 06/25/2020 the Nebraska Supreme Court And Court Of Appeals gave the following order " Motion of appellant for rehearing overruled for failure to comply with Neb. Ct. R. App. P. § 2-113(A) ", the Petitioner's Brief that was mailed off with his Motion For Rehearing, was sent back to him, because the institutional check for postage that was attached with it, somehow, got removed from the Envelope and thus the

Petitioner had to redo the Notary and the date for the Certificate Of Service. The Petitioner than sent his Appellant Brief For Rehearing off to the Nebraska Supreme Court and Court Of Appeals and one copy to the Attorney's for the Appellee. Even-though it was now to late, the Petitioner still filed that Brief. On the Petitioner timely filed a Verified Petition For Further Review And Memorandum Brief for case no. A-20-0117. On 08/04/2020 the Nebraska Supreme Court denied the Petitioner's Petition For Further Review and the only statement that was given was ""Petition of appellant for further review denied ""

On February 22,2011, the Petitioner was charged by the District Court Of Sarpy County, Nebraska, with three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information of " **COUNT IV** " (**ORIGINAL INFORMATION**), " **COUNT III OF THE SECOND AMENDED INFORMATION** " & " **COUNT V IN A SECOND AMENDED INFORMATION** ", as seen in the **B.O.E. PAGE 68:4-24**. The Judge in this matter, had committed a " **PLAIN ERROR** " because this was a Breach Of Plea Agreement, and thus everything in the proceedings following that Breach Of Plea Agreement is now " **VOID AND NULL** " and this does include the Sentence, Judgment, Conviction and Commitment. The three charges that was charged to the Petitioner, as seen in the **B.O.E PAGE 68:4-24**, don't exist on the record, nor was put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, nor is the Petitioner on the record agreeing to or understanding that he was going to be charged and plead guilty to these three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information of " **COUNT IV** " (**ORIGINAL INFORMATION**), " **COUNT III OF THE SECOND AMENDED INFORMATION** " & " **COUNT V IN A SECOND AMENDED INFORMATION** ". Because of the " **PLAIN ERROR** " and Breach Of Plea Agreement, the District Court Of Sarpy County,

Nebraska lost all Jurisdiction over the subject matter, didn't have any Personal Jurisdiction over the Petitioner, and thus did exceed it's Unlawful Authority in imposing any sentence of these three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information. The Petitioner was deprived of his **LIBERTY** by means of a "**VOID AND NULL**" Sentence, Judgment, Conviction and Commitment that was all obtained in violation of the Petitioner's Constitutional Right's for Due Process and the right for " Equal Protection " against the law.

As seen in the **B.O.E. PAGE 56:2-25 & (T22)**, "**COUNT IV**" (**ORIGINAL INFORMATION**) was amended by the State for the second time to remove the language of "**RECKLESSY CAUSE SERIOUS BODILY INJURY**" and thus the State changed that Offense, Indictment, and Information from an Unintentional Crime to a Intentional Crime, once the State changed the "**NATURE**" and "**IDENTITY**" of that "**COUNT IV**" (**ORIGINAL INFORMATION**) by that removal of that language of "**RECKLESSY CAUSE SERIOUS BODILY INJURY**". After the State made that change, the State put forth on the record that it was than known and labelled as "**COUNT IV AMENDED**" "**SECOND AMENDED INFORMATION**", as seen in the **B.O.E. PAGE 56:2-25 & (T22)**. "**COUNT IV**" (**ORIGINAL INFORMATION**) no longer exist on the record, because the State had **ABANDONED** and **DISMISSED** it for that new "**COUNT IV AMENDED**" "**SECOND AMENDED INFORMATION**" and thus the Petitioner could no longer be charged, nor plead guilty to a "**COUNT IV**" (**ORIGINAL INFORMATION**), the Petitioner could only be charged and plead guilty to that new "**COUNT IV AMENDED**"!

The District Court, no longer had any Jurisdiction over that **ABANDONED** and **DISMISSED** nonexisting Offense, Indictment and Information of "**COUNT IV**" (**ORIGINAL INFORMATION**) and thus there is no Personal Jurisdiction over the Petitioner for that **VOID** and **UNCONSTITUTIONAL** "**COUNT IV**" (**ORIGINAL INFORMATION**) that was charged

to the Petitioner, as seen in the B.O.E. PAGE 68:4-9. The Judge failed to charge the Petitioner with the Correct Offense, Indictment and Information of " COUNT IV AMENDED ", that was filed by the State, as seen in the B.O.E. PAGE 56:2-25 & (T22), and to what was put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14; 53:15-18 & 54:6-17, and to what the Petitioner had agreed to and understood to what he was going to be charged with, as seen in the B.O.E. PAGE'S 54:21-25 & 55:1-4, and therefore the District Court Of Sapry County, Nebraska didn't have any Legal Basis to impose any sentence in this matter and by doing so, the District Court did exceed it's Unlawful Authority in this matter by imposing that Sentence of 20-20 years on that VOID and UNCONSTITUTIONAL ABANDONED and DISMISSED nonexisting Offense, Indictment and Information of " COUNT IV " (ORIGINAL INFORMATION). The District Court Of Sarpy County, Nebraska also violated the Petitioner's right against Double Jeopardy on that ABANDONED and DISMISSED " COUNT IV " (ORIGINAL INFORMATION) that was charged to the Petitioner as seen in the B.O.E. PAGE 68:4-9.

" COUNT III " nor " COUNT V " was never amended to the record or on the record by the State. There is no record of " COUNT III " nor " COUNT V " being amended to the " SECOND AMENDED INFORMATION " by the State, as seen in the B.O.E. PAGE 56:2-25 & (T22). The Petitioner was charged with two VOID and UNCONSTITUTIONAL nonexisting Offense's, Indictment's and Information of " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION ", as seen in the B.O.E. PAGE 68:10-24. These two " VOID AND NULL " nonexisting Offense's, Indictment's and Information don't exist on the record, nor was they filed on the record by the State, nor was they amended on the record to the " SECOND AMENDED INFORMATION " by the State, nor was they put forth on the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14; 53:15-18 & 54:6-17, nor did the Petitioner agree to or understand that he was going to be charged and plead guilty to these VOID and

UNCONSTITUTIONAL nonexisting Offense's, Indictment's and Information of " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION " that was charged to the Petitioner, as seen in the B.O.E. PAGE 68:10-24.

The District Court Of Sarpy County, Nebraska didn't have any Jurisdiction over these two **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information of " COUNT III OF THE SECOND AMENDED INFORMATION " nor " COUNT V IN A SECOND AMENDED INFORMATION " because they don't exist on the record, nor is there any record of the State ever amending " COUNT III " & " COUNT V " to the " SECOND AMENDED INFORMATION ", as seen in the B.O.E. PAGE 56:2-25 & (T22). The " SECOND AMENDED INFORMATION " only apply to that new " COUNT IV AMENDED ", and therefore the Judge can't charge the Petitioner with something that don't exist on the record as an Offense, Indictment nor Information, nor was these two put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14; 53:15-18 & 54:6-17, nor is the Petitioner on the record agreeing to or understanding that he was going to be charged and plead guilty to these two, as seen in the B.O.E. PAGE'S 54:21-25 & 55:1-4.

The District Court Of Sarpy County, Nebraska didn't have any Personal Jurisdiction over the Petitioner once the Petitioner was charge with those two **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information of " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION ", and thus the District Court didn't have any Legal Basis to impose any sentence in this matter and because of this, the District Court did exceed it's Unlawful Authority in this matter by passing Judgment on a " **VOID AND NULL** " Sentence, Judgment, Conviction and Commitment, and pursuant to Neb. Rev. Stat. § 29-2801, the Petitioner is entitled to his discharge and the Writ is a matter of right based on the facts

In the State's Motion For Summary Affirmance, the State is trying to make it as if the " **SECOND AMENDED INFORMATION** " don't matter, but the truth of the matter is, the " **SECOND AMENDED INFORMATION** " means everything in this matter, because the State was granted leave for the second time to amend that " **COUNT IV** " (**ORIGINAL INFORMATION**), as seen in the **B.O.E. PAGE 56:2-25 & (T22)** to remove that language of " **RECKLESSY CAUSE SERIOUS BODILY INJURY** " and by doing so, the " **NATURE** " & " **IDENTITY** " of that offense changed from an **UNINTENTIONAL CRIME** to a **INTENTIONAL CRIME** and it was than known and labelled on the record by the State as " **COUNT IV AMENDED** " " **SECOND AMENDED INFORMATION** ", as seen in the **B.O.E. PAGE 56:2-25 & (T22)**.

As seen in **State V. Ring**, 233 Neb. 720 (1980) and **State V. V.Pruett**, 26363 Neb. 99 (2002), wherein the Nebraska Supreme Court held that " reckless commission of an offense cannot support a use of a weapon charge because recklessness denotes an unintentional state of mind, and use of a weapon is an intentional crime. "

As seen in the **B.O.E. PAGE 68:4-9**, the Petitioner was charged with that **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information of " **COUNT IV** " (**ORIGINAL INFORMATION**)! Now as seen on the record, this Original Information of " **COUNT IV** " still has that " **UNINTENTIONAL** " state of mind attached to it, and thus the Petitioner was charged with an " **UNINTENTIONAL** " offense that cannot support a use of a weapon charge! That language of " **RECKLESS** " is still in that **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information that was charged to the Petitioner and therefore that **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information of " **COUNT III OF THE SECOND AMENDED INFORMATION** " cannot be attached to that **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information of " **COUNT IV** " (**ORIGINAL INFORMATION**). It was Plain Error and it was Unconstitutional for the District Court to charge and find the Petitioner guilty and to impose a sentence in this matter just off of that

fact alone! Even if the Judge had charged the Petitioner with the Correct Use Of A Weapon (COUNT III) the Petitioner was still charged with that **ABANDONED** and **DISMISSED VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information of " COUNT IV " (**ORIGINAL INFORMATION**), as seen in the B.O.E. PAGE 68:4-9 and it does still have that " RECKLESS " language in it.

The Petitioner was never charged with the Correct and only existing Offense, Indictment and Information of " COUNT IV AMENDED " that don't have that **UNINTENTIONAL** state of mind in it that exist on the record and thus the Petitioner has been illegally incarcerated to a charge of " COUNT IV " (**ORIGINAL INFORMATION**) that no longer exist on the record, after the State was granted leave for the second time to amend that " COUNT IV ", as seen in the B.O.E. PAGE 56:2-25 & (T22). The Petitioner was never charged with the Correct and only existing Offense's, Indictment's and Information of " COUNT III " & " COUNT V " that exist on the record, as seen in the B.O.E. PAGE 68:10-24, the Petitioner was charged with that **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information of " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION " that don't exist on the record, nor was filed on the record as a " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION " by the State, as seen in the B.O.E. PAGE 56:2-25 & (T22), nor was this put forth on the record as being apart of the Petitioner's Contract/ Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14; 53:15-18 & 54:6-17, nor did the Petitioner agree to or understand that he was going to be charged with these **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information of " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION ", as seen in the B.O.E. PAGE'S 54:21-25 & 55:1-4 and thus the Petitioner has been illegally incarcerated to a charge of " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION " that don't exist.

" HABEAS CORPUS WRIT, PROVIDES ILLEGALLY DETAINED PRISONER'S WITH A MECHANISM FOR CHALLENGING THE LEGALITY OF A PRISONER'S IMPRISONMENT, AND CUSTODIAL DEPRIVATION OF HIS LIBERTY " Canton V. State, 291 Neb. 939, 869 N.W. 2d 911 (2015)

" HABEAS CORPUS IS A PROPER REMEDY TO USE WHEN ONE SEEKS RELEASE UPON A SHOWING THAT THE JUDGMENT, SENTENCE, AND COMMITMENT ARE VOID " Mingus V. Fairbanks, 1982, 211 Neb. 81, 317 N.W. 2d 770.

To charge and sentence the Petitioner on these three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information was "**VOID AND NULL**" because this was a Breach Of Plea Agreement and thus was a "**PLAIN ERROR**" and everything following that breach is now "**VOID AND NULL**" and that does include the Sentence, Judgment, Conviction and Commitment. The Petitioner has brought a Collateral Attack pursuant to Neb. Rev. Stat. § 29-2801 and thus the Petitioner is entitled to his discharge pursuant to statue and that writ is a matter of right based upon the facts.

A judgment of guilty is a necessary prerequisite for a sentence to be pronounced, and failure to obtain a conviction prior to sentencing a defendant is a violation of the due process rights guaranteed to citizens by the U.S. and Nebraska Constitutions. See *In re winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1072, 25 L. Ed. 2d 368 (1970) (holding, "Due Process commands that no man shall lose his liberty unless the government has born the burden of...convincing the factfinder of his guilt,") quoting *Speinser V. Randall*, 357 U.S. 513, 785 S. Ct. 1332, 2 L. Ed. 2d 1460 (1958).

The U.S. Constitution, Amendment V and XIV; Neb. Const. Art. I § 3, In a criminal case, due process of law requires that a defendant be discharged unless found guilty. See Dutiel V. State, 135 Neb. 811, 284 N.W. 321 (1939). To sentence a defendant without a substantial right of the defendant, and to leave this uncorrected would damage the integrity of the judicial process and this is " Plain Error " that leaves the conviction and sentence " Null and Void ", as ruled by the court decision in, State V. Engleman, 5 Neb. App. 484, 560 N.W. 2d 851 (Neb.App.1997) Also see State V. Long, 205 Neb. 252, 286 N.W. 2d 772 (1980).

There is no record of the District Court Of Sarpy County, Nebraska ever charging the Petitioner with the Correct and only existing Offense's, Indictment's and Information of " COUNT IV AMENDED ", " COUNT III " & " COUNT V ", as seen in the B.O.E. PAGE 68:4-25, the Petitioner was charged with three VOID and UNCONSTITUTIONAL non-existing Offense's, Indictment's and Information of " COUNT IV " (ORIGINAL INFORMATION), " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION ", and non of these exist on the record, nor was put forth on the record as being apart of the Contract/Plea Agreement, nor is there a record of the Petitioner agreeing to or understanding that he was going to be charged and plead guilty to these VOID and UNCONSTITUTIONAL charges.

There is no record of the District Court Of Sarpy County, Nebraska ever accepting the Petitioner's guilty plea to that VOID and UNCONSTITUTIONAL nonexisting Offense, Indictment and Information of " COUNT IV " (ORIGINAL INFORMATION) that was charged to the Petitioner, as seen in the B.O.E. PAGE 68:4-9, but the record does reflect that the Court had accepted a guilty plea to a " COUNT IV OF THE SECOND AMENDED INFORMATION ", as seen in the B.O.E. PAGE'S 74:25 & 75:1-3, even-though the Petitioner was never charged with a " COUNT IV AMENDED " nor a " COUNT IV OF THE SECOND AMENDED INFORMATION ". So how can the Court accepted a guilty plea for a " COUNT IV OF THE

AMENDED INFORMATION " when that was never charged to the Petitioner? The Petitioner was charged with that **VOID** and **UNCONSTITUTIONAL ABANDONED** and **DISMISSED** " **COUNT IV** " (**ORIGINAL INFORMATION**) that no longer exist on the record, nor was apart of the Contract/Plea Agreement, nor is there any record of the Petitioner agreeing to or understanding that he was going to be charged and plead guilty to that and because of Trial Court's failure to render judgment of guilty to the charge that the Petitioner was charged with by the Court (" **COUNT IV** " **ORIGINAL INFORMATION**) did rendered the sentence imposed on the Petitioner " **VOID AND NULL** " and under the Plain Error Doctrine, no judgment of guilt has been rendered against the Petitioner, the District Court Of Sarpy County, Nebraska improperly sentence the Petitioner and the sentence imposed is " **VOID AND NULL** ". In a criminal case, due process of law requires that a defendant be discharged unless found guilty. See Dutiel V. State, 135 Neb. 811, 284 N.W. 321 (1939) and there is no record of the Petitioner being found guilty of that charge of " **COUNT IV** " (**ORIGINAL INFORMATION**) that was charged to the Petitioner, as seen in the **B.O.E. PAGE 68:4-9**, and thus there is no record of guilty and thus the Petitioner has been deprived of his Liberty by means of a " **VOID AND NULL** " Sentence, Judgment, Conviction and Commitment that was obtained in violation of the Petitioner's right to Due Process.

There is no record of the District Court Of Sarpy County, Nebraska ever charging the Petitioner with a " **COUNT III** " but the record does reflect that the Petitioner was charged with that **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information of " **COUNT III OF THE SECOND AMENDED INFORMATION** ", as seen in the **B.O.E. PAGE 68:10-17**, but the record reflects that the Court had accepted the Petitioner's guilty plea to that **VOID** and **UNCONSTITUTIONAL** " **COUNT III OF THE SECOND AMENDED INFORMATION** ", as seen in the **B.O.E. PAGE'S 74:25; 75:1 & 75:4-7**, even-though " **COUNT III OF THE SECOND AMENDED INFORMATION** " don't exist on the record, nor was " **COUNT III** " ever amended on the record by the State, as seen in the **B.O.E. PAGE**

56:2-25 & (T22), and the State never amended " COUNT III " to the " SECOND AMENDED INFORMATION ", nor was this put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14; 53:15-18 & 54:6-17, nor did the Petitioner agree to or understand that he was going to be charged and plead guilty to this, as seen in the B.O.E. PAGE'S 54:21-25 & 55:1-4.

So how can the District Court Of Sarpy County, Nebraska can charge and find the Petitioner guilty to something that don't exist on the record? " COUNT III OF THE SECOND AMENDED INFORMATION " don't exist on the record, nor did the State ever file this on the record! There is no such Offense, Indictment nor Information as " COUNT III OF THE SECOND AMENDED INFORMATION ", as seen in the B.O.E. PAGE 56:2-25 & (T22) the State never amended " COUNT III " nor was it amended to the " SECOND AMENDED INFORMATION ". There is no record of a " COUNT III OF THE SECOND AMENDED INFORMATION ", so how can the Petitioner be charged and found guilty to something that don't exist? By doing so, the District Court Of Sarpy County, Nebraska don't have a Sound nor Just guilty plea on the record and under the Plain Error Doctrine, no judgment of guilt has been rendered against the Petitioner and the District Court Of Sarpy County, Nebraska improperly sentence the Petitioner and the sentence imposed is " VOID AND NULL ". Trial Court's failure to render judgment of guilt to the Correct and only existing Offense, Indictment and Information of " COUNT III " that was never charged to the Petitioner, as seen in the B.O.E. PAGE 68:10-17, did rendered the sentence " VOID AND NULL ". In a criminal case, due process of law requires that a defendant be discharged unless found guilty. See Dutiel V. State. 153 Neb. 811, 284 N.W. 321 (1939). There is no record of guilt to the Correct and only existing Offense, Indictment and Information of " COUNT III ".

There is no record of the District Court Of Sarpy County, Nebraska ever charging the Petitioner with a " COUNT V " but the record does reflect that the

Petitioner was charged with that **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information of " **COUNT V IN A SECOND AMENDED INFORMATION** ", as seen in the B.O.E. PAGE 68:18-24. The record does show that the Court had accepted a guilty plea to a " **COUNT V** ", as seen in the B.O.E. PAGE'S 74:25; 75:1 & 75:8-9, but as seen on the record in the B.O.E. PAGE 68:18-24, the Petitioner was never charged with that " **COUNT V** ", the Petitioner was charged with that **VOID** and **UNCONSTITUTIONAL** " **COUNT V IN A SECOND AMENDED INFORMATION** " even-though this don't exist on the record, nor was " **COUNT V** " ever amended on the record by the State, as seen in the B.O.E. PAGE 56:2-25 & (T22), and the State never amended " **COUNT V** " to the " **SECOND AMENDED INFORMATION** ", nor was this put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14 & 53:15-18 & 54:6-17, nor did the Petitioner agree to or understand that he was going to be charged and plead guilty to this, as seen in the B.O.E. PAGE'S 54:21-25 & 55:1-4.

So how can the District Court Of Sarpy County, Nebraska can charge the Petitioner with a **VOID** and **UNCONSTITUTIONAL** nonexisting Offense, Indictment and Information? How can the Court accept a guilty plea to a " **COUNT V** " and the record reflect that the Petitioner was never charged with that " **COUNT V** "? The record only reflect that the Petitioner was charged with that **VOID** and **UNCONSTITUTIONAL** Offense, Indictment and Information of " **COUNT V IN A SECOND AMENDED INFORMATION** ", as seen in the B.O.E. PAGE 68:18-24, Trial Court's failure to render judgment of guilt to the charge that the Petitioner was charged with (**COUNT V IN A SECOND AMENDED INFORMATION**) did rendered the sentence imposed on the Petitioner " **VOID AND NULL** " and under Plain Error Doctrine, no judgment of guilt has been rendered against the Petitioner, the District Court Of Sarpy County, Nebraska improperly sentence the Petitioner and the sentence imposed is " **VOID AND NULL** ". In a criminal case, due process of law requires that a defendant be discharged unless found guilty. See Dutiel V. State, 135 Neb. 811, 284 N.W. 321 (1939) and there is no record of the Petitioner being found guilty of

that charge of " COUNT V IN A SECOND AMENDED INFORMATION " that was charged to the Petitioner, as seen in the B.O.E. PAGE 68:18-24, and thus there is no record of guilty and thus the Petitioner has been deprived of his Liberty by means of a " VOID AND NULL " Sentence, Judgment, Conviction and Commitment that was obtained in violation of the Petitioner's right to Due Process. How can the District Court Of Sarpy County, Nebraska charge the Petitioner with something that don't exist on the record? and than find the Petitioner guilty to something other than what the Petitioner was charged with?

The Petitioner has shown cause of action for his discharge, based upon the facts, facts that prove and show that the Judge failed to charge the Petitioner with the Correct and only existing Offense's, Indictment's and Information of " COUNT IV AMENDED ", " COUNT III " & " COUNT V ", as seen in the B.O.E. PAGE 68:4-24 the Petitioner was charged with three VOID and UNCONSTITUTIONAL nonexisting Offense's, Indictment's and Information of " COUNT IV " (ORIGINAL INFORMATION), " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION " that don't exist on the record, nor was put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14; 53:15-18 & 54:6-17, nor did the Petitioner agree to or understand that he was going to be charged with these VOID and UNCONSTITUTIONAL charges, as seen in the B.O.E. PAGE'S 54:21-25 & 55:1-4, and thus the Petitioner is being illegally incarcerated by the State Of Nebraska and the Nebraska State Penitentiary don't have Legal Authority over the Petitioner, and therefore the Petitioner is entitled to discharge pursuant to Neb. Rev. Stat. § 29-2801.

The Commitment Order that was given, as seen in the B.O.E. PAGE'S 92:5-8; 92:9-12 & 92:13-15, is " VOID AND NULL " because a Breach Of Plea Agreement is a " PLAIN ERROR " and everything following that Breach Of Plea Agreement is " VOID AND NULL " and that does include the Sentence, Judgment, Conviction and Commitment. This Commitment Order is also " VOID AND NULL " because the Judge failed to charge the

Petitioner with the only Correct and existing Offense's, Indictment's and Information of " COUNT IV AMENDED ", " COUNT III " & " COUNT V " that was put forth on the record, as seen in the B.O.E. PAGE 56:2-25 & (T22), that was put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. PAGE'S 53:4-14; 53:15-18 & 54:6-17, and to what the Petitioner did agree to and understand what he was going to be charged with, as seen in the B.O.E. PAGE'S 54:21-25 & 55:1-4.

The Judge failed to charge the Petitioner with any existing Offense, Indictment nor Information and thus illegally incarcerated the Petitioner to three VOID and UNCONSTITUTIONAL Offense's, Indictment's and Information of " COUNT IV " (ORIGINAL INFORMATION), " COUNT III OF THE SECOND AMENDED INFORMATION " & " COUNT V IN A SECOND AMENDED INFORMATION " that don't exist on the record at all! and thus the District Court Of Sarpy County, Nebraska didn't have any Jurisdiction over these three VOID and UNCONSTITUTIONAL nonexisting Offense's, Indictment's and Information that don't exist, and the District Court Of Sarpy County, Nebraska don't have any Personal Jurisdiction over the Petitioner, and therefore the District Court Of Sarpy County, Nebraska didn't have any Legal Basis and did exceed it's Unlawful Authority in imposing that " VOID AND NULL " Sentence, Judgment, Conviction and Commitment of 70-90 years that deprived the Petitioner of his LIBERTY by means of a " VOID AND NULL " Sentence, Judgment, Conviction and Commitment that was obtained in violation of the Petitioner's Right to " Due Process ".

The Nebraska Supreme Court has held that " in a case of a prisoner held pursuant to a judgment of conviction, habeas corpus is available as a remedy only upon a showing that the judgment, sentence, and commitment are void " See In re Application of Dunn, 150 Neb. 669, 35 N.W. 2d 673; Swanson V. Jones, 151 Neb. 767, 39 N.W. 2d 557.

The Petitioner's Trial Counsel and Direct Appeal Counsel both failed to raise the issue to the Court that there was Breach Of Plea Agreement and by failing to do, both Trial Counsel and Direct Appeal Counsel was "**INEFFECTIVE**" and very "**INCOMPETENT**" in this matter and therefore the Petitioner's Sixth Amendment Right to have "**COMPETENT**" and "**EFFECTIVE**" Counsel at a "**CRITICAL STAGE**" in a "**CRIMINAL PROCEEDING**" was violated by both Trial Counsel and Direct Appeal Counsel.

Criminal defendant's have a constitutional right to the effective assistance at trial and for all direct appeals the state grants as of right. *Evitts V. Lucey*, 469 U.S. 387, 393, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); cf. *Halbert V. Michigan*, 545 U.S. 605, 610, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005). Generally speaking, direct appeals statutes afford the defendant's the opportunity to challenge the merits of a judgment and allege errors of law or fact. *U.S. V. Addorizio*, 442 U.S. 178, 185, 99 S. Ct. 2235, 60 L. Ed. 805 (1979),

" To bar collateral review , the plea agreement must clearly state that the defendant waives his right to collaterally attack his conviction or sentence in addition to waiving his right to a direct appeal. " *Keller V. U.S.*, 657 F. 3d. 675, 681 (7th Cir. 2011)

The Petitioner was not afforded an effective appeal on Direct Appeal, because Direct Appeal Counsel failed to raise the Breach Of Plea Agreement issue in the Petitioner's Direct Appeal, and Direct Appeal Counsel failed to raise any issue against Trial Counsel for Ineffective Of Assistance for his failure to raise the issue of the Breach Of Plea Agreement to the Court at the time of the breach. Had Trial Counsel timely objected and filed a Motion To Withdraw the Petitioner's three guilty plea's to those three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information, the outcome of this matter would have been different because the Petitioner

would have been given the option to go to trial on the original charges. The Petitioner was also entitled to other remedies such as, Motion To Quash, Motion For Arrest Of Judgment, Motion To Demurrer, Motion To Withdraw Plea and none of these Motions was filed by Trial Counsel on behalf of the Petitioner. The Petitioner had a right to these remedies once that Breach Of Plea Agreement had occurred and Trial Counsel failed to timely object and file any Motion on behalf of the Petitioner and thus this did affect the Petitioner's Substantial Right's, because the Petitioner has been illegally incarcerated to three **VOID** and **UNCONSTITUTIONAL** Offense's, Indictment's and Information.

The Petitioner's Direct Appeal Counsel also violated the Petitioner's Sixth Amendment Right to " **COMPETENT** " and " **EFFECTIVE** " Counsel at a " **CRITICAL STAGE** " in a " **CRIMINAL PROCEEDING** ", when Direct Appeal Counsel also failed to raise the issue of the Breach Of Plea Agreement on behalf of the Petitioner in the Petitioner's Direct Appeal, this matter would have been reviewed on Direct Appeal for " **PLAIN ERROR** " and all the Ineffective Assistance Claims would have been reviewed by the Supreme Court *de novo*! Both Trail Counsel and Direct Appeal Counsel deficient performance gives rise to a reasonable probability that, but for Counsel's error's the result's of the proceedings would have been different.

Exceptional Circumstances are present in this matter, because the record does reflect that the Judge failed to charge the Petitioner with the Correct and Only existing Offense's, Indictment's and Information and thus charged the Petitioner with three **VOID** and **UNCONSTITUTIONAL** nonexisting Offense's, Indictment's and Information that don't exist on the record. This was also a Breach Of Plea Agreement and everything following that Breach is " **VOID AND NULL** " which does include the Sentence, Judgment, Conviction and Commitment and therefore the District Court Of Sarpy County, Nebraska didn't have any Jurisdiction in this matter, nor any Personal Jurisdiction over the Petitioner in this matter and there was no Legal Basis in this matter and thus the

District Court Of Sarpy County, Nebraska did exceed it's Unlawful Authority in imposing any sentence in this matter.

Neb. Rev. Stat. § 29-2823 " SAID DEFENDANT MAY BE ADMITTED TO BAIL PENDING DISPOSITION OF SAID APPEAL AS IS OTHERWISE PROVIDED BY LAW " This matter is still pending of a final disposition and Bail is never to be denied for the purpose of punishment, but it is to insure a defendant's appearance and submission to the judgment of the Court. The Eight and Fourteenth Amendments, require that a Motion For Bail not be denied Arbitrarily or Unreasonably to those who apply for it. The Petitioner show facts of law, facts that show and prove that the Petitioner has been deprived his **LIBERTY** by means of a " VOID AND NULL " Sentence, Judgment, Conviction and Commitment that was rendered by the District Court Of Sarpy County, Nebraska.

The denial of a application for bail pending appeal on a State Habeas without a stated reason, does violate the Right's of Due Process in this matter because the Petitioner still has a right to bail because the record does reflect that the Petitioner don't stand convicted on a Sound nor Just Felony Conviction and thus the Petitioner still has a right to bail. The Petitioner's Petition For Writ Of Habeas Corpus & Emergency Ex Parte Motion For Bond Pending Petition For Writ Of Habeas Corpus was denied on 03/03/2020 by the Lancaster County District Court Judge Robert R. Otte and in that order there was no reason given as to why the Petitioner's Emergency Ex Parte Motion For Bond was denied, it wasn't until 04/06/2020 that the Petitioner received an Order Denying Bond On Appeal, and the failure to do so on 03/03/2020 was Arbitrarily and Unreasonably. In that Order that was given on 04/06/2020 it was stated by the Judge that " [T]he right to bail, after conviction, is discretionary and not absolute. Once a defendant has been convicted of the felony charge, he is not entitled to be released on bail. Such determination is left to the discretion of the trial court[.]"

This stated reason doesn't apply to the Petitioner in this matter, because the facts of this case does prove and show that the Petitioner don't stand convicted on any Sound nor Just Felony Offense that exist on the record, nor to what was put forth on the record as being apart of the petitioner's Contract/Plea Agreement, nor to what the Petitioner had agreed to and understood to what the Petitioner was going to be charged with.

The Provision Of **Section 9, Art I, Of The Constitution** states that **" ALL PERSONS SHALL BE BAILABLE BY SUFFICIENT SURETIES "**, etc adds nothing to the law of the subject, but is merly the declaration of am existing right. The Petitioner still has this existing right, when the record show and prove that the Petitioner isn't legally committed to any Sound nor Just Felony Conviction. The Petitioner is a Bailable person under Ne. Rev. Stat. Const. Art I, § 9, and even under the 1978 bail amendment it states " that it does not constitute cruel and unusual punishment ", and that denial for bail that was rendered in this matter was cruel and unusual punishment when the Petitioner was Arbitrarily denied that bond on 03/03/2020 and on that Order that was given on 04/06/2020 because the Petitioner isn't Legally Convicted on a Sound nor Just Felony Conviction and thus the Petitioner still has that right to bail in this matter. The Petitioner has a fundamental right to " Equal Protection " against wrongful rest- raints against his **LIBERTY** and a right to Due Process in this matter, and to deny bail in this matter was in violation of the Petitioner's State and federal Constitutional Right's Of " Equal Protection " and his right to " Due Process ".

The Petitioner's Writ Of Certiorari is now pending In The Supreme Court Of The United States For The State Of Nebraska and under Neb. Rev. Stat. § 29-2823 is states that **" SAID DEFENDANT MAY BE ADMITTED TO BAIL PENDING DISPOSITION OF SAID APPEAL AS IS OTHERWISE PROVIDED BY LAW "** and this matter is now waiting on a final disposition of said appeal with this Court. The Petitioner has no criminal charges

Pursuant to Neb. Rev. Stat. § 29-2801, the Petitioner in this matter, is entitled to the Writ and is entitled to discharge pursuant to statute, when the Petitioner has shown cause of action for his discharge and thus this Writ is a matter of right, based upon the facts, that prove and show that the Petitioner has been ~~deprived~~ of his LIBERTY by means of a " VOID AND NULL " Sentence, Judgment, Conviction and Commitment that was obtained in violation of the Petitioner's Right to Due Process. The Petitioner is seeking that this Court overturn the decision of the lower Court's and to grant the Petitioner his discharge pursuant to Neb. Rev. Stat. § 29-2801. The Petitioner also seeks that this Court grant's the Petitioner's Motion For Appeal Bond pending the disposition of this appeal.

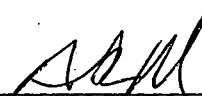
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

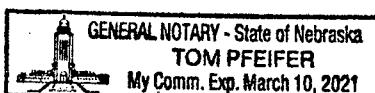
ABDUR-RASHID MUHAMMAD 73537

x



Date: 08/07/2020

NOTARY:



x Tom Pfeifer

DATE: 8/7/2020