

**CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS**
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August 4, 2020

Abdur-Rashid Muhammad #73537
Penitentiary
PO Box 22500
Lincoln, NE 68542-2500

APPENDIX A

**IN CASE OF: A-20-000117, Muhammad v. State of Nebraska
TRIAL COURT/ID: Lancaster County District Court CI19-3861**

The following filing: Petition Appellant for Further Review
Filed on 06/30/20
Filed by appellant Abdur-Rashid Muhammad #73537

Has been reviewed by the court and the following order entered:

Petition of appellant for further review denied.

Respectfully,

Clerk of the Supreme Court
and Court of Appeals

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ABDUR-RASHID MUHAMMAD,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

CASE NO. CI 19-3861

ORDER

2020 FEB -6 PM 3:49

LANCASTER COUNTY
DISTRICT COURT

THIS MATTER came before the Court on Petitioner Abdur-Rashid Muhammad's Petition for Writ of Habeas Corpus, filed on November 27, 2019. While the matter was pending, Muhammad filed the following additional motions: (1) Emergency Ex Parte Motion for Bond Pending Petition for Writ of Habeas Corpus (filing no. 1); (2) Motion for Leave to Add Supplemental Ground Two and Three (filing no. 2); (3) Motion for Leave to Add Supplemental Ground Four (filing no. 3); (4) Motion for Leave to Amend Ground One (filing no. 4); (5) Emergency Ex Parte Motion for Bond Pending Petition for Writ of Habeas Corpus (filing no. 5); (6) Motion for Leave to Add Supplemental Ground Five (filing no. 6); (7) Motion for Appointment of Counsel (filing no. 7); (8) Motion for Leave to Add Supplemental Ground Six (filing no. 8); (9) Motion for Leave to Add Supplemental Ground Seven (filing no. 9); (10) Motion for Leave to Add BOE and Transcript to the Record (filing no. 10); and (11) Motion for Leave to Add Supplemental Ground Eight (filing no. 11). For the reasons set forth below, the Court denies and overrules Muhammad's Petition for Writ of Habeas Corpus and subsequent motions in their entirety.



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BACKGROUND

On March 5, 2010, the State filed an information, charging Muhammad with six felony counts: count 1, criminal attempt–first degree murder; count 2, first degree assault; count 3, use of a weapon to commit a felony; count 4, second degree assault; count 5, second degree assault; and count 6, possession of a deadly weapon during commission of felony. The State subsequently filed an amended information adding several witnesses to the witness list. On February 22, 2011, the State filed a second amended information with leave of court, striking certain language from count 4 of the amended information. Pet. at 4. Muhammad then pleaded guilty to count 3, use of a weapon to commit a felony; count 4, second-degree assault as amended; and count 5, second-degree assault. *Id.* at 1–3. On May 2, 2011, the Sarpy County District Court sentenced Muhammad to 70 to 90 years’ imprisonment on those counts. *Id.* at 1.

In his Petition for Writ of Habeas Corpus and subsequent motions, Muhammad raises eight grounds for relief, which can be summarized into three contentions: (1) that his due process rights were violated when he entered guilty pleas to “three void indictments and information”; (2) that he was denied his Sixth Amendment right to effective assistance of counsel; and (3) that he was denied his right to appeal his first verified motion for postconviction relief. He asks this Court “to vacate, set aside or overturn” his sentence, arguing that it violated his “constitutional rights [because] the District Court of Sarpy County, Nebraska was without jurisdiction to impose that void judgment.” Pet. at 1–2. The Court, having examined Muhammad’s Petition and subsequent motions, finds that they do not state a claim upon which habeas corpus relief can be granted.

ANALYSIS

1. Habeas Corpus in Nebraska

“A writ of habeas corpus in this state is quite limited in comparison to those of federal courts, which allow a writ of habeas corpus to a prisoner when he or she is in custody in violation of the federal Constitution, law, or treaties of the United States.” *Peterson v. Houston*, 284 Neb. 861, 867, 824 N.W.2d 26, 32 (2012). “Under Nebraska law, an action for habeas corpus is a collateral attack on a judgment of conviction.” *Id.* at 867, 824 N.W.2d at 32–33. “Only a void judgment may be collaterally attacked.” *Id.* at 867, 824 N.W.2d at 33. “Where the court has jurisdiction of the parties and the subject matter, its judgment is not subject to collateral attack.” *Id.* “Thus, a writ of habeas corpus will not lie to discharge a person from a sentence of penal servitude where the court imposing the sentence had jurisdiction of the offense and the person of the defendant, and the sentence was within the power of the court to impose.” *Id.* “A writ of habeas corpus is not a writ for correction of errors, and its use will not be permitted for that purpose.” *Id.* “[T]he regularity of the proceedings leading up to the sentence in a criminal case cannot be inquired into on an application for writ of habeas corpus, for that matter is available only in a direct proceeding.” *Id.* (internal quotation omitted).

2. Muhammad’s Petition for Writ of Habeas Corpus

In his Petition for Writ of Habeas Corpus and subsequent motions, Muhammad makes the following contentions: (1) that his due process rights were violated when he entered guilty pleas to “three void indictments and information”; (2) that he was denied his Sixth Amendment right to effective assistance of counsel; and (3) that he was denied his right to appeal his first verified motion for postconviction relief.

With respect to the first contention, Muhammad argues that the district court for Sarpy County lacked jurisdiction because his due process rights were violated when his guilty pleas were not entered knowingly and intelligently. He argues that he “could no longer be charged or found guilty to . . . ‘Count IV’ (original information)” because the State had amended the information which “supersedes the prior complaint or information, and the original charges have been abandoned or dismissed” and were “not []part of the contract/plea agreement that was put forth on the record.” Pet. at 4. He further argues that he “could not be charged and found guilty of “count 3 and count 5 of the second amended information because those counts were “never amended on the record to be part of the second amended information.”

Id. at 8.

Upon reviewing the allegations, the Court finds that Muhammad has not stated a cause of action that would entitle him to habeas corpus relief in Nebraska. Contrary to his assertion, Muhammad’s allegations do not question the district court’s jurisdiction over him or the crimes, nor the district court’s authority to impose the sentence which he received. *See, e.g., Rehbein v. Clarke*, 257 Neb. 406, 412–13, 598 N.W.2d 39, 44 (1999) (“The complaint [alleging that his guilty plea was not entered voluntarily] does not question the jurisdiction of the trial court over the crime or the defendant [nor] the authority of the trial court to impose the sentence given, and thus, it may not be raised in a writ of habeas corpus.”); *State v. Blackson*, 256 Neb. 104, 107–08, 588 N.W.2d 827, 830 (1999) (“The fact that an information is fatally defective does not deny the trial court jurisdiction to issue any order relating to those purported charges.”). “Where jurisdiction has attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to

be set aside in a proper proceeding for that purpose, will not render the judgment void.”

Gonzalez v. Gage, 290 Neb. 671, 675–76, 861 N.W.2d 457, 462 (2015). Because the alleged deficiency in the information did not deprive the district court of jurisdiction, the Court finds that Muhammad is not entitled to habeas corpus relief on this ground.

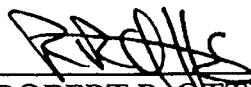
Muhammad’s second and third contentions also fail to state a cause of action for habeas corpus relief. Muhammad argues that he was denied his Sixth Amendment right to effective assistance of counsel because trial counsel failed to act when he “was charged and found guilty to three void indictments of ‘Count IV’ (original information), ‘Count III of the second amended information’ & ‘Count V in a second amended information.’” He further argues that he was denied his right to appeal his first verified motion for postconviction relief “when the Nebraska State Penitentiary lost/held his legal mail (notice of appeal),” resulting in dismissal by the appellate courts as untimely.

Similar to Muhammad’s first contention, the Court finds that the above allegations do not warrant the issuance of a writ of habeas corpus because they are allegations of “mere errors or irregularities in the proceedings that did not deprive the trial court of jurisdiction and did not render the judgment of criminal conviction void.” *See Gonzales v. Gage*, 290 Neb. 671, 861 N.W.2d 457 (2015); *see also Peterson v. Houston*, 284 Neb. 861, 824 N.W.2d 26 (2012) (holding that “ineffective counsel . . . [do not] provide a proper ground for granting a writ of habeas corpus in Nebraska.”). Accordingly, the Court finds that Muhammad is not entitled to habeas corpus relief because his allegations of ineffective assistance of counsel and procedural errors committed by the Nebraska State Penitentiary, even if proven true, are wholly insufficient to support a writ of habeas corpus in Nebraska.

IT IS, THEREFORE, ORDERED that Petitioner's Petition for Writ of Habeas Corpus is hereby denied and dismissed with prejudice. Petitioner's subsequent motions (filing nos. 1-11) are also overruled.

DATED this 18 day of February, 2020.

BY THE COURT:



ROBERT R. OTTE
DISTRICT COURT JUDGE

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)

PROOF OF SERVICE

I, ABDUR-RASHID MUHAMMAD #73537, do swear or declare that on this date, August 7th, 2020, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

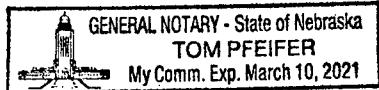
NEBRASKA ATTORNEY GENERAL 2115 STATE CAPITOL LINCOLN, NE 68509

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 7th, 2020


(Signature)

NOTARY:



x

Tom Pfeifer

DATE: 8/7/2020