

APPENDIX

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## IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CHARLES L. FILEDGROVE, ) Case No. CI 20-926  
Petitioner, )  
vs. ) ORDER  
SCOTT R. FRAKES, Director, )  
Nebraska Department of Correctional )  
Services; )  
MICHELE WILHELM, Warden, )  
Nebraska State Penitentiary, )  
Respondents.

This matter comes before the court on this 10<sup>th</sup> day of April, 2020, on a petition for writ of habeas corpus filed by petitioner, Charles Fieldgrove. The court has considered the petitioner's petition and finds that it fails to set forth grounds for issuance of a writ of habeas corpus for the reasons set forth herein.

**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

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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).

Discussing habeas corpus, the Nebraska Supreme Court has described it as a “special civil proceeding providing a summary remedy to persons illegally detained. . . [which] challenges and tests the legality of a person’s detention, imprisonment, or custodial deprivation of liberty.” *Gonzalez v. Gage*, 290 Neb. 671, 675 (2015) (citations omitted). “Habeas corpus requires the showing of legal cause, that is, that a person is detained illegally and is entitled to the benefits of the writ.” *Id.*, at 675 (citation omitted).

In *Rehbein v. Clarke*, 257 Neb. 406, 409 (1999) (citation omitted), the Nebraska Supreme Court stated that, “[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 is in custody in violation of the federal Constitution, law, or treaties of the United States.” In Nebraska, habeas corpus is a collateral attack. In discussing a collateral attack, the *Rehbein* court went on to say:

Only a void judgment may be collaterally attacked. Where the court has jurisdiction of the parties and the subject matter, its judgment is not subject to collateral attack. 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, had jurisdiction of

the person of the defendant, and the sentence was within the power of the court to impose.

*Id.* at 410.

### **Petitioner's Allegations**

Petitioner asserts he is being detained pursuant to convictions in two cases originating in the District Court of Sherman County, Nebraska and that his detention is illegal.

He alleges the illegality of his detention is because Neb. Rev. Stat. § 28-319(1) and 28-320.02(1) violate the Nebraska Constitution in that said statutes violate the single-subject rule, are overly broad, and/or are overly vague. He further alleges that since these statutes are overly broad, overly vague, and violate the single-subject rule, his convictions are void. (The court assumes for purposes of this analysis that petitioner was convicted under these statutes.)

The allegations petitioner makes are collateral attacks on his convictions, exactly what Nebraska habeas corpus <sup>*juris prudence*</sup> ~~jurisdiction~~ does not permit.

There are no allegations that the Sherman County District Court lacked personal or subject matter jurisdiction. Therefore, petitioner is not entitled to issuance of the writ as requested.

For the above and foregoing reasons, the court finds that the petition for writ of habeas corpus should be, and hereby is, overruled. This case stands dismissed.

**DATED** this 10<sup>th</sup> day of April, 2020.

**BY THE COURT:**

  
\_\_\_\_\_  
Jodi L. Nelson  
District Judge



**CLERK OF THE NEBRASKA SUPREME COURT  
AND NEBRASKA COURT OF APPEALS**  
2413 State Capitol, P.O. Box 98910  
Lincoln, Nebraska 68509-8910  
(402) 471-3731  
**FAX (402) 471-3480**

September 25, 2020

Charles L Fieldgrove #70650  
Penitentiary  
PO Box 22500  
Lincoln, NE 68542-2500

**IN CASE OF:** A-20-000350, Fieldgrove v. Frakes  
**TRIAL COURT/ID:** Lancaster County District Court CI20-926

**The following filing:** Mot. of Appellee for Summary Affirmance  
Filed on 07/31/20  
Filed by appellee Scott R Frakes Director

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

Appellee's motion for summary affirmance sustained. See, Neb. Ct. R. App. P. § 2-107(B)(2); Sanders v. Frakes, 295 Neb. 374, 888 N.W.2d 514 (2016) (final conviction and sentence entered upon alleged facially unconstitutional statute is not absolutely void, but is voidable only, and may not be attacked in habeas corpus proceeding).

Respectfully,

Clerk of the Supreme Court  
and Court of Appeals

(APPENDIX B1)



**CLERK OF THE NEBRASKA SUPREME COURT  
AND NEBRASKA COURT OF APPEALS**  
**2413 State Capitol, P.O. Box 98910**  
**Lincoln, Nebraska 68509-8910**  
**(402) 471-3731**  
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November 17, 2020

Charles L Fieldgrove #70650  
Penitentiary  
PO Box 22500  
Lincoln, NE 68542-2500

**IN CASE OF:** A-20-000350, Fieldgrove v. Frakes  
**TRIAL COURT/ID:** Lancaster County District Court CI20-926

**The following filing:** Motion Appellant for Rehearing  
Filed on 10/06/20  
Filed by appellant Charles L Fieldgrove #70650

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

Appellant's motion for rehearing under Neb. Ct. R. App. P. § 2-113 is overruled. See Sanders v. Frakes, 295 Neb. 374, 888 N.W.2d 514 (2016) (habeas corpus is not proper remedy to challenge detention pursuant to final conviction and sentence on basis that statute underlying conviction is unconstitutional).

Respectfully,

Clerk of the Supreme Court  
and Court of Appeals

(APPENDIX C1)



**CLERK OF THE NEBRASKA SUPREME COURT  
AND NEBRASKA COURT OF APPEALS**  
2413 State Capitol, P.O. Box 98910  
Lincoln, Nebraska 68509-8910  
(402) 471-3731  
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November 17, 2020

Charles L Fieldgrove #70650  
Penitentiary  
PO Box 22500  
Lincoln, NE 68542-2500

**IN CASE OF:** A-20-000350, Fieldgrove v. Frakes  
**TRIAL COURT/ID:** Lancaster County District Court CI20-926

**The following filing:** Motion appellant for Summary Reversal  
Filed on 10/06/20  
Filed by appellant Charles L Fieldgrove #70650

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

Appellant's motion for summary reversal overruled as moot.

Respectfully,

Clerk of the Supreme Court  
and Court of Appeals

(APPENDIX D1)



**CLERK OF THE NEBRASKA SUPREME COURT  
AND NEBRASKA COURT OF APPEALS**  
**2413 State Capitol, P.O. Box 98910**  
**Lincoln, Nebraska 68509-8910**  
**(402) 471-3731**  
**FAX (402) 471-3480**

February 18, 2021

Charles L Fieldgrove #70650  
Penitentiary  
PO Box 22500  
Lincoln, NE 68542-2500

**IN CASE OF:** A-20-000350, Fieldgrove v. Frakes  
**TRIAL COURT/ID:** Lancaster County District Court CI20-926

**The following filing:** Petition of Appellant for Further Review  
Filed on 12/16/20  
Filed by appellant Charles L Fieldgrove #70650

**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

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**Additional material  
from this filing is  
available in the  
Clerk's Office.**