NO. 21-7461

IN THE

SUPREME COURT OF THE UNITED STATES

(LEGAL NAME) ABDUR-RASHID MUHAMMAD

(COMMITTED NAME) ANTONIO D. ROOKS-BYRD -PETITIONER

VS.

STATE OF NEBRASKA -RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

THE NEBRASKA COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

(COMMITTED NAME)
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QUESTION(S) PRESENTED

1) Do the Fifth, Sixth, Eighth and Fourteeth Amendment's under the U.S. Constitution apply for Sixth Month Speedy Trial violation?

2) Do the Sixth Month Speedy Trial violation apply once there is a Breach Of Plea Agreement?

3) Do The U.S. Constitution provide Due Process and Equal protection for amending informations?

4) Do The U.S. Constitution provide Due Process and Equal protrction against improper information?

5) Do the Sixth Month Speedy Trial violation apply to improper information?

6) Is improper information Void and Null under the U.S. Constitution?

7) Does a Breach Of Plea Agreement render the proceedings Void and Null under the U.S. Constitution?

8) Do the Sixth Amendment Right apply during a criminal proceeding?

9) Do the Sixth and Fourteeth Amendment Right apply during leave to amend information?

10) Do the Sixth and Fourteeth Amendment Right apply for a Breach Of Plea Agreement?

11) Do the Sixth and Fourteeth Amendment Right apply for Trial Counsel and Direct Appeal Counsel to be Effective?

12) Do The U.S. Constitution provide Due Process and Equal protection during civil proceedinds?

LIST OF PARTIES

[X] 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:

RELATED CASES

State V. Rooks-Byrd, Case # CR10-69, Sarpy County District Court

Judgment entered on 06/09/2021

State V. Rooks-Byrd, Case # A-21-000543, Nebraska Court Of Appeals

Judgment entered on 12/20/2021

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The order and judgment of the Nebraska Court Of Appeals denying Common Law Procedure To Vacate pursuant to Nebraska Law and granting Summary Affirmance is unpublished and appears at Appendix A to the Petition. The order and judgment of the Nebraska Supreme Court denying Petitioner's Petition For Further Review is unpublished and appears at Appendix B to the Petition. The order and judgment of the Sarpy County District Court denying the Petitioner's Motion To Vacate & Motion For Absolute Discharge and Motion For Appointment Of Counsel pursuant to Neb. Rev. Stat. § 29-1208 is unpublished and appears at Appendix C to the Petition.

JURISDICTION

The order of the Nebraska Supreme Court denying timely filed Petition For Further Review by the panel was entered on 02/22/2022 (Appendix B). There was no extension of time filed for this timely filed Petition For Writ Of Certiorari. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

V AMENDMENT OF THE U.S. CONSTITUTION ".. Nor shall any person be subject for the same offense to be twice put in jeopardy of life, liberty or property, without due process of law."

VI AMENDMENT OF THE U.S. CONSTITUTION "...And to be informed of the nature and cause of the accusation...and to have the assistance of counsel for his defense."

VIII AMENDMENT OF THE U.S. CONSTITUTION "...Nor cruel and unusual punishments inflicted."

XIV AMENDMENT OF THE U.S. CONSTITUTION "...Nor shall any state deprive any person of life, liberty or property without due process of law; noe deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Abdur-Rashid Muhammad, formerly known as Antonio Rooks-Byrd was originally charged with attempted first degree murder, first degree assault, use of a weapon to commit a felony, two counts of second degree assault, and possession of a deadly weapon during the commission of a felony. (T2-3).

On November 1, 2010 the Petitioner's information was amended for the first time to allow the State to endorse additional witnesses. (37:1-25;38:1-15) (T16-17) Those names were hand written in on page two of the Amended Information. (T16-17). At the plea the State's only amendment to what became known as the "Second Amended Information" was to strike out the "recklessly" language in "Count IV" (Original Information) and date that change. (56: 2-25) (T22).

On February 22, 2011, the State was granted leave for the second time by way of ineterlineation to amend "Count IV" (Orihinal Information) again, (56:2-25) (T22). "Count III" was never amended by the State, nor did the State amend "Count III" to the "Second Amended Information". On this day, the State and the Petitioner's Attorney put forth what the Contract/Plea Agreement was for. (53:1-25;54:1-25;55:1-25) The record reflects that the Petitioner was going to be charged with "Count IV Amended" , "Count III" & "Count V", as seen in (53:1-25;54:1-25;55:1-25).

The Petitioner is charged by the State with Improper Information from the result of a Breach Of Plea Agreement (68:4-9;68:10-17;68:18-25) The Petitioner is on the record only Understanding and Agreeing to be charged with what was put forth on the record as being apart of the Petitioner's Contract/Plea

Agreement. (54:6-25;55:1-4)

On MAy 2, 2011, the Petitoner was sentence to 70-90 years by the District Court Of Sarpy County, Nebraska. Count IV 20-20 years, Count III 40-50 years and 10-20 years on Count V, to be served consecutively. The Petitioner was given credit for 472 days already served. (92:5-20).

On 06/03/2021, the Petitioner filed a Verified Common-Law Procedure Motion To Vacate & Motion For Absolute Discharge with the District Court Of Sarpy County, Nebraska. On 06/09/2021 the Honorable Judge George A. Thompson entered an order to deny the Petitioner relief and stated "common-law procedure to vacate is not available to Defendant." See State V. Jerke, 302, Neb. 372, 923 N.W. 2d 78 (2019). "Defendant's motion-Absolute Discharge filed on 06/03/2021 is denied. Defendant's motion is procedurally barred." See Neb. Rev. Stat. 29-1208 and State V. Hert, 192 Neb. 751, 224 N.W. 2d 188 (1974).

On 06/29/2021 the Petitioner's Notice Of Appeal was filed with Poverty Application and Affidavit, and Praecipe for Bill Of Exceptions.

The Petitioner timely filed his Brief with the Nebraska Court Of Appeals and on 09/24/2021, the Petitioner filed a Motion To Object to Summary Affirmance. On 12/20/21, the Nebraska Court Of Appeals sustained the motion for summary affirmance.

On 02/22/2022, the Petitioner's timely filed a Petition For Further Review was denied by the Nebraska Supreme Court, without a stated reason for that denial. (APPENDIX B.)

REASONS FOR GRANTING THE PETITION

The Fourteeth Amendment, (applying) the Sixth Amendment Right to a speedy trial is enforceable against the states as "one of the most basis rights preserved by our constitution" The primary burden of bringing an accused person to trial within the time provided by speedy trial statute is upon the state, and the failure to do so entitles the defendant to an absolute discharge. Neb. Rev. Stat. § 29-1207. State V. Baker, 2002, 652 N.W. 2d 612, 264 Neb. 867.

Although Nebraska's Speedy Trial statutes expressly refer to indictments and informations, they also apply to prosecutions commenced by the filing of a complaint in county court. See State V. Chapman, 2020, 949, N.W. 2d 490, 307 Neb. 443.

Here the Petitioner challenges his 2011 convictions for the charged improper information of **"COUNT IV" (ORIGINAL INFORMATION) & "COUNT III OF THE SECOND AMENDED INFORMATION"** that was charged to the Petitioner in this matter, as seen in the **B.O.E. PAGE'S 68:4-9 & 68:10-17,** which was from the result of a Breach Of Plea Agreement which is Plain Error, and was a violation of the Petitioner's Sixth Month Speedy Trial Right's.

On February 22, 2011, the State was granted leave for the second time by way of interlineation to amend "Count IV" again, as seen in the **B.O.E PAGE 56:2-25 & (T22).** "An amended pleadings supersedes the original pleadings, whereupon the original pleadings ceases to perform any office as a pleadings." See State V. Armendariz, 289 Neb. 896, 857 N.W. 2d 775 (2015). **"COUNT IV" (ORIGINAL INFORMATION)** no longer exist on the record as an Offense, Indictment or Information in this matter once the state was granted leave for

second time to change the "Nature" & "Identity" of "Count IV" by removing the language of **"RECKLESSY CAUSE SERIOUS BODILY INJURY"** from the Second Degree Assault and thus the state changed the Offense, Indictment and Information to **"COUNT IV AMENDED" "SECOND AMENDED INFORMATION"**, as seen in the **B.O.E. PAGE 56:2-25 & (T22)** which was now labelled as an intentional assault.

B.O.E. PAGE 56:2-25

"THE COURT: STATE IS GRANTED LEAVE BY INTERLINEATION TO AMEND THE INFORMATION AGAIN ON COUNT IV. RECORD SHOULD REFLECT I'M GIVING THE FILE TO MS. FREEMAN. SHE'S GOING TO AMEND IT, INITIAL, DATE THE AMENDMENT AND SHOW IT TO THE DEFENDANT AND MR. LATHROP.

MS. FREEMAN: WOULD YOU LIKE ME TO MAKE THIS THE SECOND AMENDED INFORMATION?

THE COURT: YES. THE RECORD SHOULD REFLECT THE STATE HAS NOW AMENDED THE AMENDED INFORMATION BY INTERLINEATION BY STRIKING IN COUNT IV, SECOND DEGREE ASSAULT, THE WORDS "RECKLESSLY CAUSE SERIOUS BODILY INJURY." IT'S BEEN INITIALLED AND DATED BY MS. FREEMAN. AND IT'S NOW LABELLED AS SECOND AMENDED INFORMATION. MR. LATHROP, DID YOU SEE THE AMENDMENT TO COUNT IV?

MR. LATHROP: YES, SIR, I DID.

THE COURT: ANY OBJECTION?

MR. LATHROP: NO, SIR.

THE COURT: AND, MR, BYRD, DID YOU SEE THE AMENDMENTS TO COUNT IV?

THE DEFENDANT: YES, YOUR HONOR.

As seen here on the record, the state was allowed to amend the information again on "Count IV" and the Petitioner was never given a new preliminary hearing nor waived his right to have one on the new amended information when a new preliminary

hearing was a constitutional right in this matter because the State was allowed to change the "Nature" & "Identity" of that crime for Second Degree Assault against the Petitioner and pursuant to Neb. Rev. Stat. § 29-1207, 83-1, 106 "Preliminary hearing on state's amended information was necessary, where charge didn't remain the same.

"A defendant cannot be prosecuted by information until a preliminary hearing is held." R.R.S. Neb. 1943, § 29-1607. See Ronzzo V. Sigler, 1964, 235 F. Supp. 834 affirmed 346 F. 2d 565. The procedure followed at the time of the Petitioner's proceedings didn't met the requirements of Neb. Rev. Stat. § 29-1603(1). Because § 29-1603(1) read that ""All information shall be verified by the oath of". LB669 was not amended to read "in writting and signed by" until after the Petitioner was already found guilty by the District Court and LB669 is not retroactive. See Judiciary Committe hearing transcript dated February 25, 2011 and Legislature Floor Debate dated May 18, 2012.

As seen in the B.O.E. Page 56:2-25 & (T22) "Count III" was never amended by the State, nor was "Count III" amended to the "Second Amended Information". "Count III Of The Second Amended Information" was never amended to apply to "Count IV" when "Count II" was dismissed pursuant to the Contract/Plea Agreement and thus the State could not orally stipulate that the "use of a weapon" then applied to "Count IV".

The "Second Amended Information" only struck the following language from "Count IV": "or recklessly cause serious bodily injury." (T22) "Count III" nor "Count III Of The Second Amended Information" was never ameded to reflect it applied to

"Count IV" nor "Count IV Amended" "Second Amended Information" rather than "Count II". In the original information the Petitioner was informed that he "did intentionally or knowingly cause serious bodily injury to Stephanie LaDue and that he used a knife to commit that First Degree Assault."

Once the serious bodily injury language was deleted from "Count IV" there was no longer a factual basis for the use of a weapon count, even if the State had properly ameded "Count III", in writing, to inform the Petitioner that "Count III" or "Count III Of The Second Amended Information" now applied to "Count IV" or "Count IV Amended" "Second Amended Information".

In State V. Dodson, 250 Neb. 584 (1996) Dodson was charged with a violation of Neb. Rev. Stat. 60-6, 196(Reissue 1993). State V. Dodson, 250 Neb. 584, 586 the factual basis that was supplied by the prosecutor at his plea omitted the name of the county he was arrested in. Id. at 588 Since the State had the burden of proving vebue beyond a reasonable doubt in Dodson's case the result was that "...no factual basis exists in the record for the trial court's acceptance of Dodson's guilty pleas. Thus the trial court abused its' discretion in accepting Dodson's guilty pleas. Id. at 592 and the same violation of rights occurred in the Petitioner's case. "Count III" of the original information obviously applied to "Count II", the First Degree Assault. The attempt to orally amend it to "Count IV Amended" "Second Amended Information" was a nullity because it was not amended pursuant to statute. Even if that amendment was effective, the factual basis did not fit the charge in that stabbing someone almost to death is serious bodily injury not merely bodily injury.

The sole remedy for a violation of the speedy trial right- dismissal of the charges, See Strunk V. United States, 412 U.S. 434, 440, 93 S. Ct. 2260, 37 L. Ed. 2d 56 (1973) Barker, 407 U.S., at 522, 92 S. Ct. 2182- fits the preconviction focus of the clause. Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq., "to give effect to the sixth amendment right." United States V. MacDonald, 456 U.S. 1, 7, n. 7, 102 S. Ct. 1497, 71 L. Ed. 2d 696 (1982) (quoting S. Rep. No. 93-1021, p.1 (1974)).

Within certain exceptions, the Act directs- on pain of dismissal of the charges, § 3162 (a)- that no more than 30 days pass between arrest and indictment, § 3161 (b), and that no more than 70 days between indictment and trial, § 3161 (c)(1). Some of the factors that courts should weigh, in determining whether right to speedy trial has been violated, include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. U.S.C.A. Const. Amend. 6.

The Nebraska Supreme Court has held that the adequacy of an information first questioned on appeal will be found sufficient unless it is fundamentally or fatally defective State V. Coleman, 209 Neb. 823, 311 N.W. 2d 911 (1981) and thus the Petitioner is entitled to bring his action of attack pursuant to the common-law procedure of a Motion To Vacate.

Voluntary entry of guilty or no contest plea waives every defense to a charge, whether the defense is procedural statutory, or constitutional, except the defense that the information or complaint is insufficient to charge a criminal offense.

Where no information or indictment is filed against a defendant charged with the commission of a crime during the term at which he was held to answer, his detention is unlawful, and he is entitled to be discharged. See Cerny V. State, 1901, 62 Neb. 626, 87 N.W. 336.

A party seeking to vacate a void judgment should not file a statutory proceeding, Section 25-2001 (4) applies to void-able judgments, not to void judgments. The party should instead invoke the Court's inherent power. A court has the inherent power to vacate a void judgment, a power that can be exercised any time during or after the term in which the void judgment was entered. To invoke the Court's inherent power, the party should file a motion to vacate the judgment, It is not necessary for the party to show that it acted promptly or, if the party was the defendant, to show that it has a meritorious defense. 5 Ne. Prac. § 34:18 Nebraska Civil Procedure.

Lapse of time is not a bar to granting a Motion To Vacate a void judgment. See Hayes County V. William, 82 Neb. 669 (1908). Every court possesses inherent power to vacate void judgments, either during term at which it was rendered or after it's expiration. See Capitol One Bank (USA) NA V. Lehman, 23 Neb. App. 292 (2015). The statutory procedures for vacating or modifying a judgment after the term of court are inapplicable, Capitol One Supra.

The Petitioner is seeking to vindicate his Constitutional Right to Due Process of law, which is a right guaranteed by the Sixth Amendment to the U.S. Constitution. The Petitioner cannot raise such claim under the Nebraska Postconviction

Act because the Petitioner is outside of the 1-year statutory limit and the Petitioner was never given his State or Federal Constitutional Right's to appeal the denial of his First Verified Motion For Postconviction Relief because of an Wrongful Impediment that was created by the actions of NDCS for untimely mailing the Petitioner's "Notice Of Appeal". See Muhammad V. Frakes Et Al., Case No. 21-3679 that is filed in The United States Court Of Appeals For The Eight Circuit; Muhammad V. Frakes Et Al., Case No. CI21-4713 that is filed in the District Court Of Lancaster County, Nebraska.

The common-law procedure exists to safeguard a defendant's rights in the very rare circumstance where due process principles require a forum for the vindication of a constitutional right and no other forum is provided by Nebraska law. See State V. Smith, 288 Neb. 797 (2014).

Defects or omissions which occur in indictments or in the mode of finding indictments and which are of such a fundamental character as to make the indictment wholly invailed, are not subject to waiver by the accused. R.R.S. 1943, § § 29-1808, 29-1810, 29-1812. See Nelson V. State, 167 Neb. 575 94 N.W. 2d 1 (1959).

BREACH OF PLEA AGREEMENT IS PLAIN ERROR AND IS SUBJECT TO REVIEW UNDER THE PLAIN ERROR DOCTRINE AND PURSUANT TO FED. RULES. CR. P. RULE 52(B)

Once there is a Breach Of Plea Agreement, everything following the breach is consider "Void and Null" and that does include the Sentence, Judgment, Conviction and Commitment in this matter.

"COUNT IV" (ORIGINAL INFORMATION) that no longer exist on the record as an Offense, Indictment or Information in this matter, as seen in the B.O.E. (56:2-25) & (T22) was charged to the Petitioner in this matter, as seen in the B.O.E. (68:4-9).

B.O.E. PAGE 68:4-9

"THE COURT: SIR, WE'RE GOING TO GO TO COUNT IV, SECOND DEGREE ASSAULT IN REFERENCE TO A STEPHAINE LA DUE, AND THAT'S A CLASS III FELONY; HOW DO YOU PLEAD TO COUNT IV?

THE DEFENDANT: GUILTY, YOUR HONOR."

The State breached the Petitioner's Contract/Plea Agreement in this matter and charged the Petitioner with improper information that no longer exist on the record as an Offense, Indictment or Information in this matter and also fails to state a crime in this matter. The Correct Offense, Indictment and Information that was put forth on the record by the state was for a "COUNT IV AMENDED" "SECOND AMENDED INFORMATION", as seen in the Petitioner's Contract/Plea Agreement (53:4-25;54:6-25; 55:1- 4).

B.O.E. PAGE 53:4-25

"MR. LATHROP: JUDGE, I BELIEVE THE STATE IS GOING TO MAKE A MOTION TO AMEND COUNT IV, SECOND DEGREE ASSAULT, TO STRIKE THE LANGUAGE "RECKLESSY CAUSE SERIOUS BODILY INJURY". MY CLIENT WILL ENTER A PLEA OF GUILTY TO COUNT III, USE OF A WEAPON TO COMMIT A FELONY, THE AMENDED COUNT IV AND COUNT V. THERE IS NO AGREEMENT TO SENTENCING."

THE COURT: HE'S GOING TO ENTER A PLEA TO COUNT III, PLEA OF GUILTY TO AMENDED COUNT IV, AND A PLEA OF GUILTY TO THE COUNT

V; IS THAT CORRECT?

MR. LATHROP: YES, SIR, IT IS.

THE COURT: THERE'S NO AGREEMENT TO SENTENCING?

MR. LATHROP: THAT IS CORRECT.

THE COURT: IS THAT A CORRECT STATMENT OF THE ENTIRE PLEA AGREEMENT?

MS. FREEMAN: IT IS, YOUR HONOR.

B.O.E. PAGE 54:6-25

"THE COURT: OKAY, MR. BYRD, AS I UNDERSTAND THE PLEA AGREEMENT, YOU'RE GOING TO PLEAD TO--FIRST OFF, THE STATE IS GOINT TO AMEND COUNT IV TO STRIKE THE LANGUAGE OF "RECKLESSLY CAUSE SERIOUS BODILY INJURY." AFTER THAT'S BEEN AMENDED, THEN YOUR'RE GOING TO ENTER A PLEA TO COUNT III, USE OF A WEAPON TO COMMIT A FELONY, A CLASS II FELONY: ENTER A PLEA OF GUILTY TO COUNT IV, SECOND DEGREE ASSAULT AS AMENDED, A CLASS III FELONY : AND ENTER A PLEA OF GUILTY TO COUNT V, SECOND DEGREE ASSAULT , A CLASS III FELONY. AND THERE IS NO AGREEMENT BETWEEN THE PARTIES TO MAKE ANY TYPE OF RECOMMENDATIONS AT SENTENCING. IS THAT YOUR UNDERSTANDING OF THE PLEA AGREEMENT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: IS THAT THE ENTIRE PLEA AGREEMENT AS YOU UNDERSTAND IT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: IN OTHER WORDS,"

B.O.E. PAGE 55:1-4

"THERE'S NOTHING ELSE THAT YOU THOUGHT WAS APART OF THE PLEA AGREEMENT THAT'S NOT BEEN PUT FORTH ON THE RECORD HERE TODAY?

THE DEFENDANT: NO, YOUR HONOR."

This Breach Of Plea Agreement by the State was also a violation of the Petitioner's Fifth Amendment Right that reads in part "...Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...Nor be deprived of life, liberty or property, without due process of law."

The Sixth Amendment reads in part "...and to be informed of the nature and cause of the accusation...and to have the assistance of counsel for his defense."

The Eighth Amendment reads in part "... Nor cruel and unusual punishments inflicted."

The Fourteeth Amendment reads in part "... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

When "COUNT IV AMENDED" "SECOND AMENDED INFORMATION" was not charged to the Petitioner by the State, this was a violation of the Petitioner's Constitutional Right to Due Process and The Petitioner's Six Month Speedy Trial Right's under the Sixth Amendment. Not only did the State charge the Petitioner with improper information, this was double jeopardy because "COUNT IV" (ORIGINAL INFORMATION) no longer eixted on the record as an Offense, Indictment nor Information, as seen in the B.O.E. (56:2-25) &(T22)

The Improper Information of "COUNT IV" (ORIGINAL INFOIRMATION) also fails to state a crime in this matter because it no longer exist on the record and thus there is no longer a factual basis attached in this matter for that improper information, as seen in the B.O.E. (56:2-25) .

The U.S. Constitution, Amendment V and XIV; Neb. Const. Art. § I, § 3, states that in a criminal case, "due process of law requires that a defendant be discharged unless found guilty. See Dutlel V. State, 135 Neb. 811, 289 N.W. 321 (1939) and the record in this matter, reflects that the court accepted the Petitioner's guilty plea to a "COUNT IV OF THE SECOND AMENDED INORMATION" even though the state failed to charge the Petitioner with the correct Offense, Indictment and Information of "COUNT IV AMENDED" "SECOND AMENDED INFORMATION", as seen in the B.O.E. PAGE 68:4-9

B.O.E. PAGE 75:1-4

"...AND I'M GOING TO FIND YOU GUILTY ON COUNT IV OF THE SECOND AMENDED INFORMATION, SECOND DEGREE ASSAULT IN REFERENCE TO STEPHAINE LA DUE.

The State is on the record finding the Petitioner guilty under the Offense, Indictment and Information of "COUNT IV OF THE SEOND AMENDED INFORMATION", even though there is no record of the State charging the Petitioner with a "COUNT IV OF THE SECOND AMENDED INFORMATION", as seen in the B.O.E PAGE 68:4-9. There is no record of the Petitioner being charged with that Offense, Indictment or Information of "COUNT IV OF THE SECOND AMENDED INFORMATION" and thus the Petitioner doesn't stand committed to a crime with a existing factual basis attached to it because

improper information is "Void and Null" and the Petitioner is entitled to his discharge from the commitment order of 20-20 years that was given by the District Court Of Sarpy County, Nebraska in this matter.

The Petitioner's guilty plea to that improper information of "COUNT IV" (ORIGINAL INFORMATION), as seen in the B.O.E. PAGE 68:4-9, was not made Intelligently or Knowingly in this matter because it was induced from a broken Contract/Plea Agreement and the Petitioner is not on the record understanding or agreeing to be charged by the State with that improper information of "COUNT IV" (ORIGINAL INFORMATION), as seen in the B.O.E. PAGE (54:6-25;55:1-4)

B.O.E. PAGE 54:6-25

"THE COURT: OKAY. AND, MR. BYRD, AS I UNDERSTAND THE PLEA AGREEMENT, YOU'RE GOING TO PLEAD TO--FIRST OFF, THE STATE IS GOING TO AMEND COUNT IV TO STRIKE THE LANGUAGE OF "RECKLESSLY CAUSE SERIOUS BODILY INJURY." AFTER THAT'S BEEN AMENDED, THEN YOU'RE GOING TO ENTER A PLEA TO COUNT III, USE OF A WEAPON TO COMMIT A FELONY; ENTER A PLEA OF GUILTY TO COUNT IV, SECOND DEGREE ASSAULT AS AMENDED, A CLASS III FELONY; AND ENTER A PLEA OF GUILTY TO COUNT V, SECOND DEGREE ASSAULT, A CLASS III FELONY. AND THERE IS NO AGREEMENT BETWEEN THE PARITES TO MAKE ANY TYPE OF RECOMMENDATIONS AT SENTENCING. IS THAT YOUR UNDERSTANDING OF THE PLEA AGREEMENT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: IS THE ENTIRE PLEA AGREEMENT AS YOU UNDERSTAND IT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: IN OTHER WORDS,

B.O.E. PAGE 55:1-4

THERE'S NOTHING ELSE THAT YOU THOUGHT WAS PART OF THE PLEA AGREEMENT THAT'S NOT BEEN PUT FORTH ON THE RECORD HERE TODAY?

THE DEFENDANT: NO, YOUR HONOR.

The State is obligated to uphold its side of the plea agreement, the state didn't charge the Petitioner with the correct information, the Petitoner was then released from an appeal waiver provision in his plea agreement. "Plea bargains are essentially contracts" See Mabry V. Johnson, 467 U.S. 504, 508, 104 S. Ct. 2543, 81 L. Ed. 2d 437 (1984).

Because the State breached the Plea Agreement in this matter, the Petitioner's agreement is now automatically and utterly void. See Puckett V. United States, 556 U.S. 129, 135 , 129, S. Ct. 1423, 173 L. Ed. 2d 266 (2009); U.S. V. Olano, 507 U.S. 725, 736, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993).

The District Court Of Sarpy County, Nebraska commited plain error and abused it's discretion by imposing that sentence of 20-20 years on that improper information, as seen in the B.O.E. (92:5-8).

B.O.E. PAGE 92:5-8

"IT IS THEREFORE ORDERED THAT THE DEFENDANT ON COUNT IV SHALL BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF NOT LESS THAN 20 YEARS, NOR MORE THAN 20 YEARS."

There is no existing record of the Petitioner being charged with the correct Offense, Indictment or Information that was put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, but the record does reflect that the State failed to secure a vaild guilty plea to an actual crime

that has a factual basis attached to it.

Jurisdiction to pronounce a particular sentence imposed is as essential as jurisdiction of the person and subject matter. If the first does not exist, the sentence is void, "Sentence pronounced without jurisdiction is void", See In re McVey, 50 Neb. 481, 70 N.W. 51; Wilson V. State, 117 Neb. 692, 222 N.W. 47 (1928).

" A substanial right is an essential legal right, not a mere technical right", See State V. Meese, 257 Neb. 486, 599 N.W. 2d 192 (1999). This Breach Of Plea Agreement seriously affected the fairness, integrity and public reputation of judicial proceedings, and using a proceedural default to ignore plain error resulting in a defendant being unconstitutionally incarcerated " would render the plain error doctrine relief remedies meaingless" .

"Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process.", See State V. Starks, 308 Neb. 527, 955 N.W. 2d 313 (2021). Plain error may be asserted for the first time on appeal or be noted by an appellate court on its own motion. See Worth V. Kolbeck, 273 Neb. 163, 728 N.W. 2d 282 (2007).

"COUNT III OF THE SECOND AMENDED INFORMATION" THAT WAS CHARGED BY THE STATE, AS SEEN IN THE B.O.E. PAGE 68:10-17, IS ALSO IMPROPER INFORMATION AND DOSEN'T EXIST ON THE RECORD AS AN OFFENSE, INDICTMENT OR INFORMATION IN THIS MATTER BECUASE

THE STATE NEVER AMENDED "COUNT III" NOR DID THE STATE EVER AMEND "COUNT III" TO THE "SECOND AMENDED INFORMATION", AS SEEN IN THE B.O.E. PAGE 56:2-25.

B.O.E. PAGE 68:10-17

"THE COURT: WE'RE GOING TO GO TO COUNT III OF THE SECOND AMENDED INFORMATION WHICH CHARGES YOU WITH USE OF A WEAPON TO COMMIT A FELONY, AND THAT RELATES TO COUNT IV, SECOND DEGREE ASSAULT. HOW DO YOU PLEAD TO COUNT III, USE OF A WEAPON TO COMMIT A FELONY ?

THE DEFENDANT: GUILTY, YOUR HONOR.

The State charged the Petitioner with Improper Inormation becuase "COUNT III OF THE SECOND AMENDED INFORMATION" dosen't exist as an Offense, Indictment nor Information in this matter, as seen in the B.O.E. PAGE 56:2-25, nor was this improper information put forth on the record as being apart of the Petitioner's Contract/Plea Agreement, as seen in the B.O.E. (53:1-25;54:1-25; 55:1-25).

This Breach Of Plea Agreement by the State violated the Petitioner's Due Process and Constitutional rights under the Sixth, Eighth and Fourteeth Amendment.

When the State failed to charge the Petitioner with the correct Offense, Indictment and Information of "Count III", this violated the Petitioner's Constitutional Right to Due Process and the Petitioner's Six Month Speedy Trial Right under the Sixth Amendment becuase "COUNT III OF THE SECOND AMENDED INFORMATION" doesn't exist on the record, nor was this apart of the Petitioner's Contract/Plea Agreement.

Before a plea of guilty may be accepted, the Court must inform a defendant of the nature of the charge and examine the defendant to determine that he or she understands the nature of the charge. See State V. Ponec, 1990, 236 Neb. 710, 463 N.W. 2d 793. As seen on the record in the B.O.E. (53:1-25;54:1-25 55:1-25) This didn't happen because there is no mention of that improper information of "COUNT III OF THE SECOND AMENDED INFORMATION " and the record also fails to reflect that the Petitioner had understood that the State was going to charge him with that improper information.

The Petitoner's guilty plea to that improper information of "COUNT III OF THE SECOND AMENDED INFORMATION", as seen in the B.O.E. PAGE 68:10-17, is Unintelligently and Involuntarily in this matter because the Petitioner only understood that the State was going to charge him with a "COUNT III" and not that improper information of "COUNT III OF THE SECOND AMENDED INFORMATION ", as seen in the B.O.E. (53:1-25;54:1-25;55:1-25), this improper information also fails to allege a crime in this matter and there is no record of a factual basis for it.

The U.S. Constitution, Amendment V and XIV; Neb. Const. Art. § I, § 3, states that in a criminal case, "due process of law requires that a defendant be discharged unless found guilty.", See Dutlel V. State. 135 Neb. 811, 289 N.W. 321 (1939). Improper Information is "Void and Null" and the record reflects that the Court accepted the Petitioner's guilty plea to that improper information, as seen in the B.O.E. PAGE 75:4-8.

B.O.E. PAGE 75:4-8

"...I'M GOING TO FIND YOU GUILTY ON COUNT III, USE OF A WEAPON TO COMMIT A FELONY ON THE SECOND AMENDED INFORMATION AND FIND THAT COUNT RELATES TO COUNT IV, THE SECOND DEGREE ASSAULT ON STEPHANIE LA DUE."

And as seen on the record in the B.O.E. PAGE 56:2-25, "COUNT III" was never amended by the State, nor was "COUNT III" amended to the "Second Amended Information" to read as an Offense, Indictment or Information as "COUNT III OF THE AMENDED INFORMATION" because the "Second Amended Information" is only for "COUNT IV" and not "COUNT III".

"COUNT III OF THE SECOND AMENDED INFORMATION" fails to allege a crime in this matter and there is no record of a factual basis for that use of a weapon in the form of that "Second Amended Information", which only applied to "COUNT IV AMENDED" and not to "COUNT III".

To enforce a waiver once there is a breach of plea agreement, is a miscarriage of justice, See U.S. V. Yah, 500 F. 3d 698, 704-05 (8th Cir. 2007); Santobello V. New York, 404 U.S. 257, 263 92 S. Ct. 495 30 L. Ed. 2d 427 (1971). "The Sixth Amendment guarantees that in all criminal prosections, accused shall enjoy right to be informed of nature and cause of accusation, and is made applicable to states through Fourteeth Amendment. U.S.C.A. Const. Amends. 6, 14.

Once there is a breach of plea agreement, everything following the breach is "Void and Null" which includes Sentence, Judgment, Conviction and Commitment. " It may be said that the modern doctrine or idea is that a court must possess jurisdiction not only of the person and suject matter, but to

impose the sentence which is adjudged. If the latter is lacking the sentence is not merely voidable but void." (Black, Judgments, Sec. 258; citing, among others, Ex Parte Lange, 18 Wall. [U.S.], [1] 63, [,21 L. Ed. 872 (1874)]; Ex parte Milligan, 4 wall [U.S.], 131 [, 18 L. Ed. 281 (1866)]; Ex parte Wilson, 114 U.S., 417 [, 5 S. Ct. 935, 29 L. Ed. 89 (1885)]; Ex parte Kearny, 55 Cal., 212; In re Petty, 22 Kan. 477.

The District Court Of Sarpy County, Nebraska abused its discretion by imposing that sentence of 40-50 years to "COUNT III OF THE SECOND AMENDED INFORMATION", as seen in the B.O.E. PAGE 92:9-12, when there is no record of the State ever amending "COUNT III".

B.O.E. PAGE 92:9-12

"ON COUNT III THE DEFENDANT SHALL BE COMMITTED TO THE NEBRASKA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF NOT LESS THAN 40 YEARS, NOR MORE THAN 50 YEARS."

The District Court Of Sarpy County, Nebraska lacked suject matter jurisdiction, personal jurisdiction and any legal authority to impose such sentence on that improper information of "COUNT III OF THE SECOND AMENDED INFORMATION" and thus this commitment order is invaild.

THE COMMITMENT ORDER OF 20-20 YEARS AND 40-50 YEARS IS UNCONSTITUTIONAL AND IS DEPRIVING THE PETITIONER OF HIS LIBERTY IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

"COUNT IV" (ORIGINAL INFORMATION), which is improper information in this matter, still has that "Unintentional" language of "Recklessly Cause Serious Bodily Injury" still attached to it, as seen in the (T2) & (T16) and as seen in the decisions

in State V. Ring, 233 Neb. 720 (1980) and State V. Pruett, 263 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 intential crime.

(T2) COUNT 4:

reads in part as "...DID INTENTIONALLY OR KNOWINGLY CAUSE BODILY INJURY OR RECKLESSY CAUSE SERIOUS BODILY INJURY"

AND THE SAME INFORMATION IS SEEN IN (T16)

Therefore, "COUNT III OF THE SECOND AMENDED INFORMATION", which is improper information in this matter, cannot be legally attached to that improper information of "COUNT IV" (ORIGINAL INFORMATION) because it reads as " did intentionally or knowingly cause bodily injury or recklessy cause serious bodily injury" and the key word here is "Recklessly cause serious bodily injury", (T2)(T16).

Neb. Rev. Stat. § 28-309 and 28-1205

is unconstitutional if the underlying felony which serves as the basis of the use of a weapon charge is an unintentional crime and under statute defining using a deadly weapon to commit a felony, when the felony which serves as the basis of the use of a weapon charge is an unintentional crime, the accused cannot be convicted of use of a weapon to commit a felony. Neb. Rev. Stat. § 28-1205.

THE PETITIONER'S TRIAL COUNSEL AND DIRECT APPEAL
BOTH RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL
AT A CRITCIAL STAGE IN A CRIMINAL PROCEEDING
AND VIOLATED THE PETITIONER'S SIXTH AMENDMENT
RIGHT

The Petitioner's Trial Counsel was Ineffective for failing to object to the State's attempt to amend "Count IV", when the State failed to amend the information pursuant to statute Neb. Rev. Stat. § 29-1603(1) that read in part as "All information shall be verified by oath of" at the time of the Petitioner's criminal proceedings. (56:18-22)

B.O.E. PAGE 56:18-22

"MR. LATHROP, DID YOU SEE THE AMENDMENT TO COUNT IV?

MR. LATHROP: YES, SIR; I DID.

THE COURT: ANY OBJECTION?

MR. LATHROP: NO, SIR."

The failure to object to the State's improper amending of the information in "COUNT IV" was deficient and prejudiced the Petitioner in this matter and deprived the Petitioner of his Due Process, and his Constitutional Right to have Effective and Competent counsel at a "Critical Stage" in a criminal proceeding.

Sixth Amendment Right to counsel is triggered at or after time that judicial proceedings have been initiated, whether by way of formal charge, preliminary hearing, indictment, information or arraignment. U.S.C.A. Const. Amend. 6. Brewer V. Williams, 430 U.S. 387, 398, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977) (quoting Kirby V. Illinois, 406 U.S. 682, 689, 92 S. Ct. 1877, 32 L. Ed. 2d 411 (1972)).

Only by pointing out the breach of plea agreement, can counsel protect the benefits the Petitioner bargained to receive in exchange of his plea. The failure of Trial Counsel to object to the breach of plea agreement, rendered the proceedings fundamentally unfair because counsel performance prejudiced the Petitioner in this matter because the State was allowed to charge the Petitioner with Improper Information, that fails to allege a crime and has no factual basis attached to it in this matter.

A proper objection and or a Motion To Withdraw Plea; Motion To Quash or a Motion To Demurrer, would have changed the outcome in this matter, However, as the record reflects, Trial Counsel failed to take any kind of legal action and thus violated the Petitioner's Due Process and Sixth Amendment Rights to have Effective and Competent counsel at a "Critical Stage" in a criminal proceeding.

Trial Counsel also failed to object when the Petitioner was given 20-20 years and 40-50 years on that improper information of "COUNT IV" (ORIGINAL INFORMATION) & " COUNT III OF THE SECOND AMENDED INFORMATION" when this attachment is unconstitutional, because an Unintentional Assault cannot be legally attached to an Intentional Use Of A Weapon under Nebraska Law. This deficient performance by Trial Counsel prejudiced the Petitioner and there is a reasonable probability that but for counsel's unprofessional error's, the result of the proceedings would have been different.

In certain Sixth Amendment contexts, prejudice is presumed actual or construcive denial of the assistance of counsel altogether is legally presumed to result in prejudice. The Petitioner's Direct Appeal Cousel also rendered ineffective assistance of counsel in this matter, when Counsel failed to even raise a single claim of Ineffective Assistance against Trial Counsel, when the record reflects numerous error's and prejudice by the Petitioner's Trial Counsel in this matter.

Had Direct Appeal Counsel been Effective and Competent on behalf of the Petitioner and raised such issue's on direct appeal, the error's could have been reviewed on Direct Appeal for Plain Error and thus Direct Appeal Counsel rendered Ineffective Assistance Of Counsel in violation of the Petitioner's Sixth Amendment Right, by failing to perfect an appeal in this matter.

Criminal defendant's have a constitutional right to the effective assistance at trial and for all direct appeals the state grants as of right. See Evitts V. Lucey, 469 U.S. 387, 393, 105 S. Ct. 830, 83 L. Ed. 281 (1985); cf. Halbert V. Michigan, 545 U.S. 605, 610, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005) and Generally speaking, direct appeals statutes afford defendants the opportunity to challenge the merits of a judgment and allege errors of law or fact. See U.S. V. Addorizio, 442 U.S. 178, 185, 99 S. Ct. 2235, 60 L. Ed. 805 (1979), and that right was denied to the Petitioner in this matter by Direct Appeal Counsel.

Both Trial Counsel and Direct Appeal Counsel failed in there duty's to uphold the Petitioner's Due Process and Sixth Amendment Right to have Effective and Competent Counsel at a "Critical Stage" in a criminal proceeding and therefore did prejuicied the Petitioner in this matter and denied the Petitioner a full and fair proceeding.

"When the terms of an agreement have been intended in a defferent sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it" Neb. Rev. Stat. § 25-1217 and a "Contract must be interpreted according to the intention of the parties." See Frank B. Hall & Co. V. Alexander & Alexander, Inc., 1992, 974 F. 2d 1020 and both Trial Counsel and Direct Appeal Counsel failed to protect the Petitioner's Liberty, when the State was allowed to breach the plea agreement and illegally incarcerate the Petitioner in this matter to improper information that fails to allege a crime.

State Court's are bound by decisions of The United States Supreme Court when they establish citizen's due process rights under Federal Constitution. U.S.C.A. Const. Art. 6, cl. 2; U.S.C.A. Const. Amend. 14 and thus the decisions given by the lower Court's in this matter was contrary, and does involve an unreasonable application of, clearly established Federal Law, as determind by the Supreme Court Of The United States.

THE PETITIONER HAS SERVED THE TIME GIVEN ON THE COMMITMENT ORDER OF 10-20 YEARS, AS SEEN IN THE B.O.E. PAGE 92:13-15 AND IS NOW BEYOND THE PAROLE ELIGIBILITY DATE FOR THAT COMMITMENT ORDER THAT WAS GIVEN BY THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA.

B.O.E. PAGE 92:13-15

"ON COUNT V THE DEFENDANT SHALL BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF NOT LESS THAN 10 YEARS, NOR MORE THAT 20 YEARS."

The Petitioner has already served this commitment order that was given by the District Court Of Sarpy County, Nebraska and is therefor being illegally incarcerated by the State Of Nebraska. To obtain absolute discharge from the offense charged, a defendant is not required to show prejudice sustained as the result of failure to bring the defendant to trial within the six months in accordance with speedy trial statute. Neb. Rev. Stat. § § 29-1207(2), 29-1208. State V. French, 2001, 621 N.W. 2d 548.

When ruling on a motion for absolute discharge pursuant to speedy trial statute, the trial court shall make specific findings of each period of delay excludable under statute such findings shall include the date and nature of the proceeding circumstances, or rulings which initiated and concluded each excludable perios, the number of days composing each excludable period, and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. Neb. Rev. Stat. § § 29-1207, 29-1208 and as seen in "Appendix C" the order given by the District Court does not comply and fails to set forth the above calculation as part of its findings in applying § 29-1207 and thus this the Petitioner's Due Process was violated by this order.

The Petitioner requests that the highest Court in the nation intervene to correct this error on part of the State Courts that violated the U.S. Constitution in this matter. An action to set aside a judgment must be brought in the court which rendered the judgment, otherwise the records of one court would be under the control of other courts of co-ordinate jurisdiction. A judgment is a matter of record, and can only be changed, set aside or modified by the court by whose authority the record is made. or by the direction of a court of higher jurisdiction in proceedings to review the judgment if this were not so, chaos would result.

A document filed pro se is to be liberally construed, and a pro se complaint, howerve inartfully pleaded, must be held to less stringent standars than formal pleadings drafted by lawyers. Fed. Rules. Civ. Proc. Rule 8 (a)(2)(f), 28 U.S.C A.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, (LEGAL NAME) ABDUR-RASHID MUHAMMAD
(COMMITTED NAME) ANTONIO D. ROOKS-BYRD

Date: 03/01/2022