

No. **22-5649**

Supreme Court, U.S.
FILED

AUG 24 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Graylin Gray — PETITIONER
(Your Name)

vs.

Scott R. Frakes, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Nebraska Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Graylin Gray
(Your Name)

2725 N.Hwy 50
(Address)

Tecumseh, NE 68450
(City, State, Zip Code)

(402) 335-5998
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. The amended information was not filed when petitioner appeared in court for arraignment and waived reading of the 12 count amended information and advisement of charges and penalties on December 21, 2006 in CR 06-511. The amended information was file-stamped December 22, 2006. Did the district court have subject matter jurisdiction ?

2. The amended information was not served on petitioner prior to him appearing in court and waiving reading of the 12 count amended information and advisement of charges and penalties on December 21, 2006 in CR 06-511. The amended information was served on Graylin Gray personally on 1-4-07 at Jail. Did the district court have personal jurisdiction ?

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:

RELATED CASES

Gray v. Frakes, No. CI 21-69, Johnson County District Court. Order entered February 17, 2022.

Gray v. Frakes, No. A-22-158, Nebraska Court of Appeals. Order entered May 20, 2022.

Gray v. Frakes, No. A-22-158, Nebraska Supreme Court. Order entered June 13, 2022.

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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☐ is unpublished.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☐ is unpublished.

☒ 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,
☒ 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,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was June 13, 2022.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in the case.

U.S. Const. Amend. 14.

The third clause of Section 1 of the Fourteenth Amendment to the Constitution which provide, so far as material here:

" ~~that~~ nor shall any state deprive any person of ... liberty without due process of law. "

Neb. Rev. Stat. §29-1602 (Reissue 2008)

All informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant. He shall subscribe his name thereto and endorse thereon the name of the witnesses known to him at the time of filing the same; and at such time thereafter, as the court or a judge thereof in vacation, in its or his discretion, may prescribe, he shall endorse thereon the names of such other witnesses as shall then be known to him.

Neb. Rev. Stat. §29-2801

If any person, except persons convicted of some crime or offense for which they stand committed or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this state, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or herself or by any person on his or her behalf, to any one of the judges of the district court, or to any county judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is

CONSTITUTIONAL AND STATUTORY PROVISIONS

INVOLVED CONTINUE

imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas, which writ shall be issued forthwith by the clerk of the district court, or by the county judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person or persons who detains such prisoner.

STATEMENT OF THE CASE

Gray filed a state petition for writ of habeas corpus, pursuant to Neb. Rev. Stat. §29-2801 in the District Court of Johnson County, Nebraska, claiming that (1) the district court was without subject matter jurisdiction because amended information was not filed when petitioner appeared in court for arraignment and waived reading of the 12 count amended information and advisement of charges and penalties on December 21, 2006 in CR 06-511. The amended information was file stamped December 22, 2006; and (2) the district court was without personal jurisdiction because amended information was not served on petitioner prior to him appearing in court and waiving reading of the 12 count amended information and advisement of charges and penalties on December 21, 2006 in CR 06-511. The amended information was served on Graylin Gray personally on 1-4-07 at Jail.

On September 20, 2021, the court examined the petition to determine if it states a claim for relief, and entered a order for the Respondents to file a written response to the petition for writ of habeas corpus by October 2021. The court further entered an order directing the clerk of the district court to issue summons for service upon the respondent, Scott R. Frakes, Director.

On October 20, 2021, Respondent, Scott R. Frakes filed a Response to Order to Show Cause, stating Gray's allegations are not proper grounds for habeas relief.

On October 27, 2021, Petitioner filed a Traverse to Response to Order to Show Cause.

STATEMENT OF THE CASE CONTINUE

On February 17, 2022, the court conducted a second examination of the Petition to determine if it states a claim for relief, and entered another order denying petition for writ of habeas corpus.

Gray filed an appeal in the Nebraska Court of Appeals.

On May 20, 2022, the Nebraska Court of Appeals sustained Motion of appellee for summary affirmance.

On June 13, 2022, the Nebraska Supreme Court denied petition for appellant for further review.

REASONS FOR GRANTING THE PETITION

SUBJECT MATTER JURISDICTION:

Subject matter jurisdiction is the power of tribunal to hear and determine case of general class or category to which the proceedings in question belong and to deal with the general subject matter involved. See *Becker v. Nebraska Acct. & Disclosure Comm.*, 249 Neb. 28, 541 N.W.2d 36 (1995).

Under §29-1602, all informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant. He shall subscribe his name thereto and endorse thereon the names of the witnesses known to him at the time of filing the same; and at such time thereafter, as the court or a judge thereof in vacation, in its discretion, may prescribe, he shall endorse thereon the names of such other witnesses as shall then be known to him. Neb. Rev. Stat. §29-1602 (Reissue 2008).

The issue of subject matter jurisdiction can be raised at any time. *Mahmood v. Madmud*, 279 Neb. 390, 778 N.W.2d 426 (2010). While lack of subject matter jurisdiction cannot be waived nor the existence of subject matter jurisdiction by the consent or conduct of the parties, lack of personal jurisdiction may be waived and such jurisdiction conferred by the conduct of the parties. *Concordia Teacher College v. Nebraska Dept. of Labor*, 563 N.W. 2d 345, 252 Neb. 504 (1997). failure to attack indictment or information prior to trial is a waiver of any defect therein which are not jurisdictional. *State v. O'Grady*, 137 Neb. 824, 291 N.W. 497.

REASONS FOR GRANTING THE PETITION CONTINUE

The record makes clear that the amended information was not filed when petitioner appeared in court for arraignment and waived reading of the 12 count amended information and advisement of charges and penalties on December 21, 2006 in CR 06-511. The amended information was filed stamped December 22, 2006. Therefore, as a matter of law, the district court for Lancaster County did not retain jurisdiction over the question of Gray's arraignment and waiver of reading the 12 count amended information and advisement of charges and penalties on December 21, 2006 in CR 06-511.

PERSONAL JURISDICTION:

Personal jurisdiction is the power of a tribunal to subject and bind a particular entity to its decisions. *Glass v. Nebraska Dept. of Motor Vehicles*, 248 Neb. 501, 536 N.W.2d 344 (1995). While the lack of subject matter jurisdiction cannot be waived nor the existence of subject matter jurisdiction conferred by the consent or conduct of the [252 Neb. 508] parties, lack of personal jurisdiction may be waived and such jurisdiction conferred by the conduct of the parties. *Id.* One who invokes the power of the court on an issue other than the court's jurisdiction over's person makes a general appearance so as to confer on the court personal jurisdiction over that person. *Id.*

The record makes clear that the amended information was not served on petitioner prior to him appearing in court and waiving reading of the 12 count amended information and advisement of charges and penalties on December 21, 2006 in CR 06-511. The amended information was served on Graylin Gray personally on 1-4-07 at Jail. Gray did not invoke the power of the court on an

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Graylin Gray

Date: August 23, 2022