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Kirk Robinson, appellant, v. Taggart Boyd, warden, Reception and Treatment Center, and Rob Jeffreys, director, Nebraska Department of Correctional Services, appellees.

___ N.W.3d ___

Filed November 13, 2026. No. S-24-762.

1. **Habeas Corpus: Appeal and Error.** Whether the allegations in an application for a writ of habeas corpus are sufficient to warrant discharge is a matter of law that an appellate court reviews de novo.
2. **Habeas Corpus: Pleadings.** It is the duty of the court on presentation of an application for a writ of habeas corpus to examine it.
3. **Habeas Corpus: Pleadings: Judgments.** Judicial discretion is exercised in the allowance of a writ of habeas corpus, and such facts must be made to appear in the application to the court as in its judgment will, prima facie, entitle the applicant to be discharged from custody.
4. **Habeas Corpus: Pleadings.** If the application for writ of habeas corpus sets forth facts which, if true, would entitle the applicant to discharge, then the writ is a matter of right, and the writ must be allowed and issued forthwith.
5. **Habeas Corpus: Pleadings: Proof.** If the application for writ of habeas corpus alleges mere conclusions of law, or if the facts alleged in the application do not show that the applicant is entitled to discharge, then the writ should be disallowed.
6. **Habeas Corpus: Prisoners.** In the 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.
7. **Habeas Corpus: Jurisdiction: Sentences.** 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.

8. **Jurisdiction: Indictments and Informations.** A defect in an indictment, information, or complaint, even the failure to allege all essential elements of an offense, does not affect a court's statutory or constitutional power to adjudicate the case and, therefore, its jurisdiction.
9. **Habeas Corpus: Jurisdiction: Indictments and Informations: Sentences: Collateral Attack.** An indictment, information, or complaint that fails to allege each essential element of a statutory offense does not affect a sentencing court's jurisdiction over that offense such that the sentence is subject to collateral attack by a writ of habeas corpus.

Appeal from the District Court for Lancaster County: Andrew R. Jacobsen, Judge. Affirmed.

Gerald L. Soucie for appellant.

Michael T. Hilgers, Attorney General, and Austin N. Relph for appellees.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, and Bergevin, JJ.

Bergevin, J.

INTRODUCTION

Kirk Robinson appeals from the district court's order that dismissed his application for a writ of habeas corpus. Robinson's appeal presents one primary question for our consideration: whether the failure to allege an essential element of a statutory offense in an information renders a sentence on that offense void, such that the sentence is subject to collateral attack by a writ of habeas corpus. We conclude that it does not, and we affirm the judgment of the district court.

BACKGROUND

Criminal Case

In 2019, as part of a plea agreement, Robinson pleaded no contest to three counts charged in the operative information:

stalking,[1] tampering with evidence,[2] and possession of a deadly weapon (firearm) by a prohibited person.[3] The district court sentenced Robinson to three consecutive sentences of imprisonment, respectively, of 2 years 364 days to 3 years, 1 year 364 days to 2 years, and 7 to 25 years.

Relevant here is Robinson's sentence for the count of possession of a deadly weapon by a prohibited person, a Class ID felony with a maximum sentence of 50 years' imprisonment and a mandatory minimum of 3 years' imprisonment. Robinson's sentence of 7 to 25 years' imprisonment was within statutory limits. The information to which he pleaded alleged that "on or between the 17th day of October, 2018 and the 20th day of October, 2018, [Robinson] did then and there, possess a firearm while being the subject of a current and validly issued Harassment Protection Order." At Robinson's plea hearing, the State submitted that the trial evidence would show that Robinson was in possession of a deadly weapon "at the time [he] was subject to a validly-issued protection order."

However, § 28-1206(1)(a)(iii) provides, in relevant part, that a person commits the offense of possession of a deadly weapon by a prohibited person if he or she possesses a firearm and he or she "[i]s the subject of a current and validly issued . . . harassment protection order . . . *and is knowingly violating such order*[.]" (Emphasis supplied.)

Application for Writ of Habeas Corpus

In 2024, after serving his first two sentences, Robinson made an application to a different district court for a writ of habeas corpus. He asserted the writ should issue on two grounds: The sentence under which he was in custody was void because (1) the information to which he pleaded no contest failed to allege all essential elements of the offense

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[1] See Neb. Rev. Stat. § 28-311.04 (Cum. Supp. 2024).

[2] See Neb. Rev. Stat. § 28-922 (Cum. Supp. 2024).

[3] See Neb. Rev. Stat. § 28-1206 (Cum. Supp. 2022).

of possession of a firearm by a prohibited person and (2) the factual basis failed to support all the essential elements of the offense. His application attached copies of the information to which he pleaded, the bill of exceptions of the plea hearing, the district court's journal entry accepting his plea, the bill of exceptions of the sentencing hearing, the court's sentencing order, and the commitment to the Nebraska Department of Correctional Services, among other documents.

Upon receipt of Robinson's application, the district court neither allowed nor disallowed the writ to issue. Instead, it entered an order that directed the clerk of the court to serve a copy of Robinson's application on the appellees, Taggart Boyd, the warden of the Reception and Treatment Center, and Rob Jeffreys, the director of the Nebraska Department of Correctional Services, as well as the Nebraska Attorney General. It further ordered the appellees to respond in writing "to show cause why the [w]rit should not issue."

The appellees filed a written response. They argued that there was no merit to Robinson's application for habeas corpus relief. They contended that (1) the omission of an essential element of an offense does not present a jurisdictional issue rendering a sentence void and (2) thus, the information in Robinson's case was not fatally defective because it "referenced the applicable statute" and "apprised Robinson of the accusation." The district court ordered a hearing on Robinson's application, after which the court took the matter under advisement and later issued a judgment, styled as an order.

In its judgment, the district court first concluded that a trial court has jurisdiction to sentence a defendant charged by an information that fails to include all the essential elements of an offense. It also concluded that an insufficient factual basis does not affect a court's power to sentence a defendant. The court did not consider whether the information to which Robinson pleaded failed to allege all the essential elements of the offense of possession of a firearm by a prohibited person. The court's judgment effectively denied Robinson's

application for a writ of habeas corpus and disallowed issuance of the writ.

Robinson filed a timely appeal and petitioned to bypass review by the Nebraska Court of Appeals.[4] The State moved for summary affirmance of Robinson's appeal. We granted Robinson's petition and overruled the State's motion.

ASSIGNMENTS OF ERROR

Robinson assigns, restated, that the district court erred as a matter of law in denying his application for a writ of habeas corpus and disallowing the writ, because he is currently being held under a void sentence on the grounds that (1) the information failed to allege an essential element of the offense of possession of a deadly weapon by a prohibited person and (2) the factual basis offered at his plea hearing did not cure that jurisdictional defect because it failed to establish that he was a prohibited person.

STANDARD OF REVIEW

[1] Whether the allegations in an application for a writ of habeas corpus are sufficient to warrant discharge is a matter of law that an appellate court reviews de novo.[5]

ANALYSIS

Before addressing Robinson's assignments of error, we must first consider whether a writ of habeas corpus was available to him based on his allegations that the sentencing court imposed a sentence for an offense where the information failed to allege an essential element. To address this question, we begin by reviewing the statutory procedure in Nebraska governing the writ of habeas corpus. We then review our precedent on alleging criminal offenses in indictments, informations, and complaints as relevant to writs of habeas corpus.

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[4] See, Neb. Rev. Stat. § 24-1106(2) (Cum. Supp. 2024); Neb. Ct. R. App. P. § 2-102(B) (rev. 2022).

[5] *Ballheim v. Settles*, 318 Neb. 873, 19 N.W.3d 748 (2025).

Writ of Habeas Corpus

The procedure concerning the writ of habeas corpus is statutorily provided and set forth in Neb. Rev. Stat. §§ 29-2801 to 29-2824 (Reissue 2016 & Cum. Supp. 2024).[6] Relevant here, any person unlawfully deprived of his or her liberty may make application for a writ of habeas corpus and at the same time produce a copy of the commitment or cause of detention, or if imprisoned or detained without legal authority, show the same by oath or affirmation.[7]

[2,3] The next procedural step requires the court to determine, sua sponte and based on the allegations of the application, if the writ should issue.[8] It is the duty of the court on presentation of an application for a writ of habeas corpus to examine it.[9] Habeas corpus is a writ of right, but not a writ of course, and probable cause must first be shown, which rightly prevents the writ from being trifled with by those who manifestly have no right to be at liberty.[10] The application

> "should be construed somewhat liberally, in favor of the liberty of the citizen, but it should place before the court or judge facts enough to permit an intelligent judgment to be formed of the case. [It] should show in what the illegality consists, and this should be done by stating facts, as contradistinguished from mere conclusions of law."[11]

Judicial discretion is exercised in the allowance of the writ, and such facts must be made to appear in the application to the court as in its judgment will, prima facie, entitle the

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[6] See *id.*

[7] See § 29-2801.

[8] See, *id.*; *Ballheim v. Settles, supra* note 5.

[9] See, *Buggs v. Frakes*, 298 Neb. 432, 904 N.W.2d 664 (2017); *Stapleman v. Hann*, 155 Neb. 410, 51 N.W.2d 891 (1952). See, also, *O'Neal v. State*, 290 Neb. 943, 863 N.W.2d 162 (2015) (Cassel, J., concurring).

[10] *In re Application of Tail, Tail v. Olson*, 145 Neb. 268, 16 N.W.2d 161 (1944).

[11] *Id.* at 272, 16 N.W.2d at 164 (quoting *State ex rel. Sherin v. Goss*, 73 Minn. 126, 75 N.W. 1132 (1898)).

applicant to be discharged from custody.[12] "'It is, therefore, incumbent upon the [applicant] to set forth the particulars in which this imprisonment was illegal.'"[13]

[4] If the application for writ of habeas corpus sets forth facts which, if true, would entitle the applicant to discharge, then the writ is a matter of right, and the writ must be allowed and issued forthwith.[14] When a writ of habeas corpus has been allowed, the person to whom the writ is directed shall file a return and convey the applicant before the judge who allowed the writ.[15] The applicant should be produced and a hearing held thereon to determine the question of fact presented,[16] after which the court may either recommit, bail, or discharge the applicant.[17]

[5] If, on the other hand, the application for writ of habeas corpus alleges mere conclusions of law, or if the facts alleged in the application do not show that the applicant is entitled to discharge, then the writ should be disallowed.[18]

INDICTMENTS, INFORMATIONS, AND COMPLAINTS

As mentioned above, the primary question we must answer is whether, assuming Robinson's allegation that the information to which he pleaded no contest failed to include an essential element of the relevant offense is true, the sentence imposed for that offense was void, such that the sentence is subject to a collateral attack and an application for a writ of habeas corpus was an appropriate remedy. Robinson submits that it was. In support of his contention, Robinson relies on

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[12] See *In re Application of Tail, Tail v. Olson, supra* note 10.

[13] *Id.* at 272, 16 N.W.2d at 164 (quoting *Matter of Mellor v. Hinkley*, 201 A.D. 619, 194 N.Y.S. 732 (1922)).

[14] See *Ballheim v. Settles, supra* note 5. See, also, § 29-2801.

[15] See §§ 29-2802 and 29-2816.

[16] See *Ballheim v. Settles, supra* note 5. See, also, §§ 29-2802 to 29-2806.

[17] See *Ballheim v. Settles, supra* note 5. See, also, §§ 29-2805 and 29-2806.

[18] See *Ballheim v. Settles, supra* note 5. See, also, *In re Application of Tail, Tail v. Olson, supra* note 10.

our precedent concerning indictments, informations, and complaints, which we review here.

We have said that it is a fundamental principle of criminal law that an indictment, information, or complaint must charge explicitly all that is essential to constitute the offense, and it cannot be aided by intendments.[19] To charge a statutory offense, the information or complaint must contain a distinct allegation of each essential element of the crime as defined by the law creating it, either in the language of the statute or its equivalent.[20] An indictment, information, or complaint that is insufficient to meet the requirements of the statute defining the offense and is for that reason fatally defective, charges no crime under said section and does not support a sentence of imprisonment.[21] The governing principle is that an information is fatally defective only if its allegations can be true and still not charge a crime.[22] The inquiry on habeas corpus may extend to the question of whether the complaint or information charges an offense known to the law, since this objection goes to the question of jurisdiction.[23]

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[19] See *Smith v. State*, 21 Neb. 552, 32 N.W. 594 (1887). See, also, Neb. Rev. Stat. § 29-1604 (Reissue 2016) ("provisions of the criminal code in relation to indictments . . . shall in the same manner and to the same extent, as nearly as may be, apply to informations").

[20] *State v. Reichstein*, 233 Neb. 715, 447 N.W.2d 635 (1989); *Fredericksen v. Dickson*, 148 Neb. 739, 29 N.W.2d 334 (1947). See, e.g., *In re Application of Flanders*, 119 Neb. 761, 230 N.W. 684 (1930); *Barton v. State*, 111 Neb. 673, 197 N.W. 423 (1924); *Newby v. State*, 75 Neb. 33, 105 N.W. 1099 (1905); *Hase v. State*, 74 Neb. 493, 105 N.W. 253 (1905).

[21] See *Smith v. State*, 68 Neb. 204, 94 N.W. 106 (1903).

[22] *Smith v. State*, 169 Neb. 199, 99 N.W.2d 8 (1959); *Nelson v. State*, 167 Neb. 575, 94 N.W.2d 1 (1959); *Hunt v. State*, 143 Neb. 871, 11 N.W.2d 533 (1943).

[23] See *In re Caldwell*, 82 Neb. 544, 118 N.W. 133 (1908). See, also, *Nicholson v. Sigler*, 183 Neb. 24, 157 N.W.2d 872 (1968). Cf. *State, ex rel. Gossett, v. O'Grady*, 137 Neb. 824, 291 N.W. 497 (1940) (validity of information not foreclosed as information properly charged crime).

Robinson understands the foregoing propositions to collectively recognize that where an indictment, information, or complaint fails to include an essential element of an offense, a sentence imposed for such offense is void and subject to collateral attack by a writ of habeas corpus. We do not, however, appear to have ever expressly held that is so. And, in any event, we believe such a conclusion would be inconsistent with the limited availability of a writ of habeas corpus under Nebraska law.

FAILURE TO CHARGE ESSENTIAL ELEMENT DOES NOT RENDER SENTENCE VOID

[6,7] The availability of a writ of habeas corpus and relief thereunder in Nebraska are well established. In the 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.[24] 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.[25] A writ of habeas corpus will not lie upon the ground of mere errors and irregularities in the judgment or sentence rendering it not void, but only voidable.[26] Stated differently, a judgment that is not void, even if erroneous, cannot be collaterally attacked by a writ of habeas corpus.[27]

Thus, the question before us is whether the sentencing court in Robinson's case had jurisdiction to impose a sentence for the offense of possession of a deadly weapon by a prohibited

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[24] *Ballheim v. Settles, supra* note 5. See *In re Betts*, 36 Neb. 282, 54 N.W. 524 (1893).

[25] E.g., *Garza v. Kenney*, 264 Neb. 146, 646 N.W.2d 579 (2002); *Jackson v. Olson*, 146 Neb. 885, 22 N.W.2d 124 (1946).

[26] See, *Ballheim v. Settles, supra* note 5; *In re Betts, supra* note 24.

[27] See *Ballheim v. Settles, supra* note 5.

person, assuming Robinson's allegation that the information failed to include an essential element of that offense is true. For reasons we will explain next, we conclude that the sentencing court had jurisdiction to sentence Robinson.

Regardless of the allegations in the information, Robinson pleaded no contest to the offense of possession of a deadly weapon by a prohibited person. It is this statutory offense for which the sentencing court imposed a sentence that was within statutory limits. There is no part of the judgment that indicates a jurisdictional defect—the sentencing court 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.[28] As the U.S. Supreme Court has observed, "'[T]he objection that the indictment does not charge a crime . . . goes only to the merits of the case.'"[29] It does not go to the trial court's jurisdiction over the case or to impose sentence.[30]

In *United States v. Cotton*,[31] the U.S. Supreme Court considered whether the omission from a federal indictment of a fact that enhanced the statutory maximum sentence rendered the enhanced sentence void. The U.S. Supreme Court recognized that a prior case suggested that such an omission was "'jurisdictional'" but explained that the prior case was referring to a "'somewhat expansive notion of "jurisdiction,"'" "which was 'more a fiction than anything else.'"[32] The Court

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[28] See, e.g., *Garza v. Kenney, supra* note 25; *Jackson v. Olson, supra* note 25.

[29] *United States v. Cotton*, 535 U.S. 625, 631, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002) (quoting *Lamar v. United States*, 240 U.S. 60, 36 S. Ct. 255 60 L. Ed. 526 (1916)). See, *U.S. v. Scruggs*, 714 F.3d 258 (5th Cir. 2013); *U.S. v. De Vaughn*, 694 F.3d 1141 (10th Cir. 2012); *Vanwinkle v. U.S.*, 645 F.3d 365 (6th Cir. 2011); *U.S. v. Delgado-Garcia*, 374 F.3d 1337 (D.C. Cir. 2004). But see *U.S. v. Peter*, 310 F.3d 709 (11th Cir. 2002).

[30] See *id.*

[31] See *United States v. Cotton, supra* note 29.

[32] *Id.*, 535 U.S. at 630 (quoting *Custis v. United States* 511 U.S. 485, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994), and *Wainwright v. Sykes*, 433 U.S. 72, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977)).

went on to explain that the term "'jurisdiction,'" properly understood, refers to "'the courts' statutory or constitutional *power* to adjudicate the case.'"[33] Because federal district courts have subject matter jurisdiction over all crimes cognizable under the authority of the United States, the Court concluded that a defective indictment does not affect the jurisdiction of a trial court to determine a case presented by an indictment.

[8] We are persuaded by the Court's reasoning in *United States v. Cotton*. A defect in an indictment, information, or complaint, even the failure to allege all essential elements of an offense, does not affect a court's statutory or constitutional power to adjudicate the case and, therefore, its jurisdiction. Although not a jurisdictional defect, such failure may still be error.[34]

[9] We thus hold that an indictment, information, or complaint that fails to allege each essential element of a statutory offense does not affect a sentencing court's jurisdiction over that offense such that the sentence is subject to collateral attack by a writ of habeas corpus. To the extent language in our prior cases suggests otherwise, we disapprove of that language.[35] In doing so, we recognize that there is a distinction between a sentence for an offense that was improperly charged and a sentence for a nonexistent offense.[36] All crimes

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[33] *United States v. Cotton, supra* note 29, 535 U.S. at 630 (quoting *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)).

[34] See, e.g., *State v. Dicken*, 321 Neb. 301, 34 N.W.3d 97 (2026).

[35] See, e.g., *Nicholson v. Sigler, supra* note 23; *Fredericksen v. Dickson, supra* note 20; *State, ex rel. Gossett, v. O'Grady, supra* note 23; *In re Caldwell, supra* note 23; *Smith v. State, supra* note 21.

[36] See, *Ballheim v. Settles, supra* note 5; *Meyer v. Frakes*, 294 Neb. 668, 884 N.W.2d 131 (2016); *Gamron v. Jones*, 148 Neb. 645, 28 N.W.2d 403 (1947); *Kuwitzky v. O'Grady*, 135 Neb. 466, 282 N.W. 396 (1938).

in this state are statutory and no act is criminal unless the Legislature has in express terms declared it to be so.[37]

Accordingly, Robinson's application for a writ of habeas corpus fails to allege a claim which, if true, would entitle him to discharge. Thus, the district court correctly disallowed the writ. Because the writ should not have been issued, we need not consider Robinson's assignments of error. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.[38]

CONCLUSION

An information that fails to allege all the essential elements of a statutory offense does not affect the jurisdiction of a sentencing court to impose a sentence for that offense. Because the sentencing court in Robinson's case imposed a sentence for a statutory offense, the judgment was not void and Robinson was not entitled to a writ of habeas corpus. The district court was correct in not issuing a writ. Accordingly, we affirm the judgment of the district court.

AFFIRMED.

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[37] See, e.g., *State v. Betancourt-Garcia*, 310 Neb. 440, 967 N.W.2d 111 (2021); *State v. Hauck*, 190 Neb. 534, 209 N.W.2d 580 (1973).

[38] *Schmuecker v. Lancaster County*, 321 Neb. 623, 36 N.W.3d 185 (2026).