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court became aware of this fact only after opposing counsel raised an objection at the hearing. Furthermore, the juvenile court could not have known why notice was not given by DHHS, because the relevant interactions between the parties occurred outside the presence of the court.

Despite not having firsthand knowledge of the contemptuous conduct, the juvenile court summarily held DHHS in contempt. The juvenile court did not give DHHS prior notice of the contempt accusations, hold a civil contempt proceeding, or provide DHHS a reasonable time to make its defense.[16] Therefore, the juvenile court abused its discretion by summarily holding DHHS in contempt for conduct that occurred outside the presence of the court.

CONCLUSION

The juvenile court's inherent power to issue contempt orders is subject to the contemnor's receiving proper notice and an opportunity to be heard when the contempt is not committed in the presence of the court. In this instance, the juvenile court abused its discretion by summarily imposing a sanction for conduct that did not occur in its presence. We vacate the January 9, 2012, contempt order and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED FOR FURTHER PROCEEDINGS.

[16] See § 25-2122.

TIMOTHY L. PETERSON, APPELLANT, V. ROBERT P. HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, STATE OF NEBRASKA, APPELLEE.

824 N.W.2d 26

Filed December 14, 2012. No. S-12-242.

1. **Affidavits: Appeal and Error.** A district court's denial of in forma pauperis status under Neb. Rev. Stat. § 25-2301.02 (Reissue 2008) is reviewed de novo on the record based on the transcript of the hearing or the written statement of the court.
2. **Constitutional Law: Judgments.** Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to

appeal in a felony case, Neb. Rev. Stat. § 25-2301.02(1) (Reissue 2008) allows the court on its own motion to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious, provided that the court issue a written statement of its reasons, findings, and conclusions for denial.

3. **Actions: Words and Phrases.** A frivolous legal position pursuant to Neb. Rev. Stat. § 25-2301.02 (Reissue 2008) is one wholly without merit, that is, without rational argument based on the law or on the evidence.
4. **Affidavits: Judgments.** When, pursuant to Neb. Rev. Stat. § 25-2301.02(1) (Reissue 2008), a trial court denies leave to proceed in forma pauperis on its own motion on the ground that the party seeking leave is asserting legal positions which are frivolous or malicious, its order shall include the court's reasons for such conclusion.
5. **Habeas Corpus.** Habeas corpus is a special civil proceeding providing a summary remedy to persons illegally detained.
6. ____. A writ of habeas corpus challenges and tests the legality of a person's detention, imprisonment, or custodial deprivation of liberty.
7. **Habeas Corpus: Proof.** 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.
8. **Constitutional Law: Habeas Corpus.** A writ of habeas corpus in the State of Nebraska 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.
9. **Habeas Corpus: Judgments: Collateral Attack.** Under Nebraska law, an action for habeas corpus is a collateral attack on a judgment of conviction.
10. **Judgments: Collateral Attack.** Only a void judgment may be collaterally attacked.
11. **Judgments: Jurisdiction: Collateral Attack.** Where the court has jurisdiction of the parties and the subject matter, its judgment is not subject to collateral attack.
12. **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 and the person of the defendant, and the sentence was within the power of the court to impose.
13. **Habeas Corpus.** A writ of habeas corpus is not a writ for correction of errors, and its use will not be permitted for that purpose.
14. **Habeas Corpus: Sentences.** The 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.
15. **Jurisdiction: Words and Phrases.** Subject matter jurisdiction is the power of a tribunal to hear and determine a case of the general class or category to which the proceedings in question belong and to deal with the general subject matter involved.
16. **Courts: Jurisdiction.** Pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2008), district courts are vested with general, original, and appellate jurisdiction over civil and criminal matters.
17. **Indictments and Informations: Appeal and Error.** An information first questioned on appeal must be held sufficient unless it is so defective that by

no construction can it be said to charge the offense for which the accused was convicted.

18. **Indictments and Informations**. A complaint or information is fatally defective only if its allegations can be true and still not charge a crime.
19. ____. No information shall be deemed invalid for any defect or imperfection which does not prejudice the substantial rights of the defendant upon the merits.
20. **Jurisdiction: Indictments and Informations**. The fact that an information is fatally defective does not deny the trial court jurisdiction to issue any order relating to those purported charges.
21. **Criminal Law: Venue.** Under Neb. Rev. Stat. § 29-1301 (Reissue 2008), a criminal defendant has a right to be tried in the county in which the criminal offense is alleged to have been committed.
22. **Criminal Law: Venue: Proof.** The State must prove proper venue beyond a reasonable doubt in criminal cases.
23. **Pleas.** Generally, a guilty plea admits all facts recited in open court by the State and all facts alleged in the information or complaint, including the fact that the offense was committed and the time and place of its commission.
24. **Jurisdiction: Judgments: Appeal and Error.** 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.

Appeal from the District Court for Lancaster County: ANDREW R. JACOBSEN, Judge. Affirmed.

Timothy L. Peterson, pro se.

Jon Bruning, Attorney General, and George R. Love for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

STEPHAN, J.

Timothy L. Peterson sought leave to proceed in forma pauperis in order to file a petition for a writ of habeas corpus in the district court for Lancaster County. On its own motion, the district court determined that the legal positions asserted in the petition were frivolous, and it denied the motion to proceed in forma pauperis for that reason. Peterson appealed, and we moved the case to our docket on our own motion pursuant to our statutory authority to regulate the caseloads of the appellate courts of this state.[1]

[1] See Neb. Rev. Stat. § 24-1106 (Reissue 2008).

BACKGROUND

On August 21, 2008, a complaint filed in Butler County charged Peterson with two counts of first degree sexual assault and eight counts of second-offense violation of a protection order. The complaint alleged that on "April 4 and/or 5, 2008," Peterson "did subject another to sexual penetration without . . . consent or the victim was less than sixteen years of age . . . when the defendant was nineteen years of age or older." It also alleged that Peterson knowingly violated the provisions of a previous protection order by disturbing the peace and quiet of an individual on several occasions.

On October 7, 2008, the State filed an amended information charging Peterson with one count of attempted first degree sexual assault and one count of second-offense violation of a protection order. This information alleged that Peterson "intentionally engage[d] in conduct, which under the circumstances as he believed them to be, constituted a substantial step in a course of conduct intended to culminate in the commission of the crime of Sexual Assault in the First Degree." Peterson was convicted and sentenced to 16 to 20 years in prison on the attempted sexual assault conviction and to a consecutive term of 20 to 60 months in prison on the protection order conviction.

On September 4, 2008, an information filed in the district court for Platte County charged Peterson with attempted first degree sexual assault. The information alleged that the crime occurred in January or February 2008, when Peterson was 19 years of age or older and the victim was at least 12 years old but less than 16 years old. Peterson pled guilty and was sentenced to a term of 6 to 10 years in prison, with credit for 191 days served. The sentence was to be served concurrently with any other sentence Peterson was currently serving.

In his petition for a writ of habeas corpus, Peterson alleged that he is being illegally detained because the amended Butler County information was "fatally defective." He contended that the amended information quoted the criminal statutes but did not provide any identifying characteristics of any victim or

the time, place, and facts to support the sexual assault charge. Peterson claimed that the district court for Butler County lacked subject matter jurisdiction because it accepted a guilty plea "to a mere collection of pointless words." He also asserted that the sexual assault charge in Butler County subjected him to double jeopardy because it was the same crime he was convicted of in Platte County, where the victim was identified as "K.W."

In addition, Peterson claimed that his counsel in the Butler County case failed to file a motion to quash the defective information or to prepare a double jeopardy defense. Peterson alleged that his counsel refused to file a direct appeal and that he was coerced into pleading to the charges. Peterson also claimed he is actually innocent of the charges. He asserted that the Butler County convictions are void and that the sentences must be vacated and a new trial granted. He did not challenge the Platte County conviction.

On February 28, 2012, the district court for Lancaster County entered an order stating that it had reviewed the petition for writ of habeas corpus and had determined that "it is frivolous." The order concludes: "IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Petition for Writ of Habeas Corpus and Motion to Proceed In Forma Pauperis are overruled and denied. Pursuant to statute, the petitioner is given 30 days in which to pay the filing fee or appeal."

Peterson filed a timely notice of appeal, and the district court granted him leave to appeal in forma pauperis.

ASSIGNMENTS OF ERROR

Peterson assigns that the district court erred in finding the legal positions asserted in his petition for writ of habeas corpus to be frivolous and in denying him leave to proceed in forma pauperis in that court.

STANDARD OF REVIEW

[1] A district court's denial of in forma pauperis status under Neb. Rev. Stat. § 25-2301.02 (Reissue 2008) is reviewed de

novo on the record based on the transcript of the hearing or the written statement of the court.[2]

ANALYSIS

[2,3] Applications to proceed in forma pauperis are governed by § 25-2301.02. Except in those cases where the denial of in forma pauperis status "would deny a defendant his or her constitutional right to appeal in a felony case," § 25-2301.02(1) allows the court "on its own motion" to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious, provided that the court issue "a written statement of its reasons, findings, and conclusions for denial."[3] A frivolous legal position pursuant to § 25-2301.02 is one wholly without merit, that is, without rational argument based on the law or on the evidence.[4] When an objection to an application to proceed in forma pauperis is sustained, "the party filing the application shall have thirty days . . . to proceed with an action or appeal upon payment of fees, costs, or security."[5]

[4] In this case, the district court concluded that the legal positions advanced by Peterson were "frivolous," but did not state its reasons for reaching that conclusion. Because our review is de novo on the record, we proceed to address Peterson's assignments of error. But we hold prospectively that when, pursuant to § 25-2301.02(1), a trial court denies leave to proceed in forma pauperis on its own motion on the ground that the party seeking leave is asserting legal positions which are frivolous or malicious, its order shall include the court's reasons for such conclusion.

[5-7] We begin by examining the scope of the state habeas corpus remedy which Peterson seeks to invoke. Habeas corpus is a special civil proceeding providing a summary remedy to

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[2] § 25-2301.02(2); *Martin v. McGinn*, 265 Neb. 403, 657 N.W.2d 217 (2003).

[3] *Cole v. Blum*, 262 Neb. 1058, 637 N.W.2d 606 (2002).

[4] *Id.*

[5] § 25-2301.02(1). See *Martin v. McGinn, supra* note 2.

persons illegally detained.[6] A writ of habeas corpus challenges and tests the legality of a person's detention, imprisonment, or custodial deprivation of liberty.[7] 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.[8]

[8-14] 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.[9] Under Nebraska law, an action for habeas corpus is a collateral attack on a judgment of conviction.[10] Only a void judgment may be collaterally attacked.[11] Where the court has jurisdiction of the parties and the subject matter, its judgment is not subject to collateral attack.[12] 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.[13] A writ of habeas corpus is not a writ for correction of errors, and its use will not be permitted for that purpose.[14] "[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."[15]

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[6] *Poindexter v. Houston*, 275 Neb. 863, 750 N.W.2d 688 (2008); *Tyler v. Houston*, 273 Neb. 100, 728 N.W.2d 549 (2007).

[7] *Poindexter v. Houston, supra* note 6.

[8] *Id.*

[9] *Rehbein v. Clarke*, 257 Neb. 406, 598 N.W.2d 39 (1999); *Mayfield v. Hartmann*, 221 Neb. 122, 375 N.W.2d 146 (1985).

[10] See *Rehbein v. Clarke, supra* note 9.

[11] *Id.*

[12] *Id.*

[13] *Id.*; *Anderson v. Gunter*, 235 Neb. 560, 456 N.W.2d 286 (1990).

[14] See *Rehbein v. Clarke, supra* note 9.

[15] *Id.* at 410-11, 598 N.W.2d at 44.

With these general principles in mind, we turn to the specific grounds upon which Peterson alleged he is entitled to a writ of habeas corpus. First, Peterson alleged that the amended information to which he entered his guilty plea was defective and insufficient to establish jurisdiction over the subject matter or his person. He alleged that the amended information was a "mere collection of pointless words" which did not identify "any victim, time, place, or facts to support evidence of offense." He alleges that the deficiencies in the information deprived the district court for Butler County of subject matter jurisdiction. This legal position is wholly without merit.

[15-20] Subject matter jurisdiction is the power of a tribunal to hear and determine a case of the general class or category to which the proceedings in question belong and to deal with the general subject matter involved.[16] Pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2008), district courts are vested with general, original, and appellate jurisdiction over civil and criminal matters.[17] We have held that an "information first questioned on appeal must be held sufficient unless it is so defective that by no construction can it be said to charge the offense for which the accused was convicted."[18] And "a complaint or information is fatally defective only if its allegations can be true and still not charge a crime."[19] In addition, "[n]o information shall be deemed invalid for any defect or imperfection which does not prejudice the substantial rights of the defendant upon the merits."[20] And even the "fact that an information is fatally defective does not deny the trial court jurisdiction to issue any order relating to those purported charges."[21] Based upon our de

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[16] *State v. Thomas*, 268 Neb. 570, 685 N.W.2d 69 (2004).

[17] See *id*.

[18] *State v. Coleman*, 209 Neb. 823, 826, 311 N.W.2d 911, 912 (1981).

[19] *Id*. at 826, 311 N.W.2d at 913, citing *Phillips v. State*, 154 Neb. 790, 49 N.W.2d 698 (1951).

[20] *State v. Mays*, 203 Neb. 487, 491, 279 N.W.2d 146, 149 (1979).

[21] *State v. Blackson*, 256 Neb. 104, 107, 588 N.W.2d 827, 830 (1999). Accord *State v. Thomas, supra* note 16.

novo review, we conclude that the charging documents in the Butler County case contain no deficiencies which would have deprived the district court of jurisdiction to convict Peterson of the offenses to which he entered pleas of guilty.

[21-23] Next, Peterson alleged in his petition that the offenses for which he was convicted in Butler County actually occurred in Platte County. Under Neb. Rev. Stat. § 29-1301 (Reissue 2008), a criminal defendant has a right to be tried in the county in which the criminal offense is alleged to have been committed. Additionally, we have held that the State must prove proper venue beyond a reasonable doubt in criminal cases.[22] Peterson's petition and the attached court records establish that he entered a guilty plea to an amended information which clearly alleged that he had attempted to sexually assault a minor "in Butler County, Nebraska." Generally, a guilty plea admits all facts recited in open court by the State and all facts alleged in the information or complaint, including the fact that the offense was committed and the time and place of its commission.[23] Peterson admits in his habeas petition that he pled guilty. His guilty plea waived his right to question whether the Butler County District Court had jurisdiction over a crime which he admitted occurred in Butler County.

[24] Peterson also alleged that he is entitled to habeas relief on the bases of double jeopardy, actual innocence, miscarriage of justice, malicious prosecution, judicial bias, ineffective counsel, and conflict of interest. None of these provide a proper ground for granting a writ of habeas corpus in Nebraska. "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."[24]

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[22] See *State v. Phelps*, 241 Neb. 707, 490 N.W.2d 676 (1992).

[23] *State v. Dodson*, 250 Neb. 584, 550 N.W.2d 347 (1996), *overruled on other grounds, State v. Paul*, 256 Neb. 669, 592 N.W.2d 148 (1999).

[24] *Rehbein v. Clarke, supra* note 9, 257 Neb. at 410, 598 N.W.2d at 43-44.

CONCLUSION

Based upon our de novo review of the record, we conclude that the district court did not err in denying Peterson's application to proceed in forma pauperis on the ground that the legal positions asserted in the petition for writ of habeas corpus which he sought to file were frivolous. As noted, the district court gave Peterson "30 days in which to pay the filing fee or appeal," which is in accordance with the procedure prescribed by § 25-2301.02(1). Thus, upon the spreading of our mandate affirming the district court's denial of leave to proceed in forma pauperis, Peterson shall have 30 days to pay the fees necessary to file his petition.

AFFIRMED.