

Affirmed and Memorandum Opinion filed August 17, 2023.



In The

Fourteenth Court of Appeals

NO. 14-22-00329-CV

LUCAS NELSON, Appellant

V.

ROBYN GRIFFITH, Appellee

**On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 116189-CV**

MEMORANDUM OPINION

In this appeal, pro se appellant Lucas Nelson, effectively argues that the trial court erred by dismissing his civil lawsuit pursuant to Civil Practice and Remedies Code chapter 14 (inmate litigation). Because Nelson's civil action is an impermissible attack on a criminal conviction, we affirm the judgment of the trial court.

I. BACKGROUND

Lucas Nelson was convicted in 2018 of the second-degree felony of aggravated assault with a deadly weapon and sentenced to 20-years' imprisonment. In January 2022, he filed a civil suit against appellee Robyn Griffith, the assistant criminal district attorney representing the State in the 2018 criminal proceeding, attempting to attack his criminal conviction for want of subject-matter jurisdiction.¹

In April 2022, the trial court granted Griffith's² motion to dismiss Nelson's claims as frivolous or malicious pursuant to Civil Practice and Remedies Code chapter 14. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.003(2).³ Nelson timely filed a notice of appeal.

II. ANALYSIS

We review the claims of an inmate proceeding with liberality and patience. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972); *see Minix v. Gonzales*, 162

¹ Nelson's brief introduces him as follows:

Now Comes Aggrieved party Lucas Nelson (hereinafter Aggrieved party), Sui Juris, Secured Party, NON-PERSON, NON-CITIZEN, NON-RESIDENT, NON-DEBTOR, NON-CORPORATED, NON-FICTION, NONSUBJECT, NON-PARTICIPANT in any government programs, a Living flesh and blood Man standing on the ground, Sovereign, under Special Appearance not Generally, NON-DEFENDANT, Holder-In-Due-Course of all of the "Enitivity" Cestui Que Vie trust Lucas Nelson ©TM, representing the Corporate Fiction LUCAS NELSON©TM. Under no circumstances is the Plaintiff "Pro Se" as this Complaint is filed under the Holder-In-Due-Couse; Lucas Nelson of the "Cestui Que Vie Trust" of LUCAS NELSON.

² Griffith was represented by counsel with the Brazoria County Criminal District Attorney because Nelson's claims raise alleged actions or omissions by Griffith in her professional capacity as a prosecutor for the County.

³ Civil Practice and Remedies Code chapter 14 applies to actions, including appeals, brought by an inmate in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate. Tex. Civ. Prac. & Rem. Code Ann. § 14.002.

S.W.3d 635, 637 n.1 (Tex. App.—Houston [14th Dist.] 2005, no pet.). While we must construe his petition liberally in the light most favorable to him, Nelson as a pro se litigant must comply with all applicable rules of procedure and substantive law. *See Burbage v. Burbage*, 447 S.W.3d 249, 258 (Tex. 2014) (explaining that courts may not stray from procedural rules simply because litigant represented self); *Sorrow v. Harris Cnty. Sheriff*, 622 S.W.3d 496, 501 (Tex. App.—Houston [14th Dist.] 2021, pet. denied).

After Nelson filed his appellate brief, Griffith filed a motion to strike the brief for failure to comply with the Texas Rules of Appellate Procedure. *See* Tex. R. App. P. 38.1. The motion was granted, Nelson’s brief was stricken, and Nelson was ordered to file a brief complying with the Texas Rules of Appellate Procedure. Although Nelson filed a second, amended brief, Griffith moved to strike the amended brief and dismiss the appeal for want of prosecution arguing the amended brief did not comply with the Texas Rules of Appellate Procedure.

Nelson’s second brief raises the following five “points of review,” which we quote without the original footnotes:

POINT 1:

The Prosecutor; D/B/A: Robyn Griffith has the duty to place all fact(s) of jurisdiction upon the record as a necessary requirement of due process of law, AND without evidence, no such jurisdiction can be presumed to exist.

POINT 2:

Since Robyn Griffith has remained silent thus refusing to prove jurisdiction on the official record, [i]t is the court’s responsibility to prove it has subject matter jurisdiction, and where a judge arbitrarily claims the court has jurisdiction, he is violating the Plaintiff[’]s right to due process of the law. Further, “When a judge acts where he

or she does not have jurisdiction to act, the judge is engaged in an act or acts of treason.” It is, in fact, the Defendant’s D/B/A: Robyn Griffith; responsibility to prove, on the record, that jurisdiction exists, and jurisdiction can be challenged at any time, even years later, and even collaterally, as in a private administrative process, as was done herein.

POINT 3:

It is the Plaintiff[’]s right to challenge jurisdiction, and it is the Court[’]s duty to prove it exist[s]. Any proceeding which transpired without having jurisdiction proven or without the court ordering jurisdictional evidence being placed on the official, once challenged, constitutes fraud upon the court. Fraud in its elementary common law sense of deceit. . . includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, . . . and if he deliberately conceals material information from them he is guilty of fraud. Again, the question is, did the original court, in the aforementioned cause, have lawful jurisdiction?

Point 4:

The Lower Court erred [sic] in its decision to dismiss the Jurisdictional Challenge that was present[ed] to it. It is clear, that once jurisdiction is challenged, it is to be proven, by the party that asserted jurisdiction [i]n other words, the burden of proof of jurisdiction lies with the asserter in which is Robyn Griffith. The Lower Court was only to rule on []the sufficiency of the proof tendered, or in this instance the lack thereof.

Point 5:

The Judge(s)/Prosecutors; D/B/A: Robyn Griffith and/or any/all agent(s) has the duty to place all fact(s) of jurisdiction upon the record as a necessary requirement of due process of law. A Court “cannot confer jurisdiction” where none exists and cannot make a void proceeding valid. Defendant is not immune to any/all jurisdictional Cause(s).

Because we can discern the legal arguments advanced by Nelson, we deny appellee’s motion to strike Nelson’s second brief and decide Nelson’s appeal on the merits. Tex. R. App. P. 38.1(h). Nelson’s appellate points do not address any error committed by the trial court in the underlying civil case. Instead, Nelson’s brief makes clear his primary legal issue is his allegation there was no subject-matter jurisdiction supporting his 2018 criminal conviction. However, Nelson’s civil action was an impermissible civil attack on a final criminal conviction and was not an appropriate vehicle to reverse or vacate his conviction.

The exclusive post-conviction remedy in final felony convictions in Texas is through a writ of habeas corpus pursuant to Code of Criminal Procedure article 11.07. *See* Tex. Code Crim. Proc. Ann. art. 11.07; *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (“We are the only court with jurisdiction in final post-conviction felony proceedings.”); *see also Calton v. Schiller*, 498 S.W.3d 247, 252 (Tex. App.—Texarkana 2016, pet. denied). The post-conviction application for writ of habeas corpus must be filed with the court of criminal appeals. Therefore, the trial court did not have jurisdiction to reverse or vacate Nelson’s felony conviction.

Nelson also could not properly seek any damages for wrongful imprisonment. *See Cooper v. Trent*, 551 S.W.3d 325, 337 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) (civil tort claims which undermine validity of criminal conviction have no basis in law until conviction is reversed or invalidated); *Powell v. Hodgkins*, No. 14-22-00300-CV, 2023 WL 2422866, at *4 (Tex. App.—Houston [14th Dist.] Mar. 9, 2023, no pet. h.) (mem. op.) (“Under the *Heck* doctrine, an individual who has been convicted of a crime cannot bring a section 1983 claim that involves allegations inconsistent with the validity of his criminal conviction, unless he proves that the conviction or sentence ‘has been

reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.”) (quoting *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994)).

Therefore, we overrule all of Nelson's points, and affirm the trial court's April 12, 2022, judgment dismissing Nelson's civil claims as frivolous or malicious in nature under Civil Practice and Remedies Code section 14.003. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.003(a), (b).

/s/ Charles A. Spain
Justice

Panel consists of Justices Zimmerer, Spain, and Poissant.