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| DISTRICT COURT, PUEBLO COUNTY, COLORADO Pueblo Combined Courts 501 N. Elizabeth Street, Room 116 Pueblo, CO 81003 (719) 404-8700 | DATE FILED November 13, 2024 1:41 PM CASE NUMBER: 2024CV30471 |
| <hr/> DEAN LOPEZ, Petitioner vs. DAVID LUCERO, Respondent. Intervenor: City of Pueblo | <hr/> ▲ COURT USE ONLY ▲ |
| <hr/> | <hr/> Case Number 24CV30471 Division 405 |
| <hr/> <p style="text-align: center;"><u>COURT'S ORDER RE: WRIT OF HABEAS CORPUS</u></p> | |

THIS MATTER came before the Court for a Hearing on the Petition for Writ of Habeas Corpus on November 1, 2024, at 1:00 PM in Division 405. The Petitioner was present with his attorneys, Ms. McLean-Riggs and Mr. McDonald of the ACLU, the Respondent was present and represented by Mr. Wagoner of the County Attorney's Office, and the Intervenor was present and represented by City Attorney Carla Sikes and Assistant City Attorney Lisa Macchietto, who were present with Intervenor's Counsel, Mr. Ziporin.

Having considered the arguments of Counsel, the briefs, the Court file, the relevant rules and statutes, and otherwise being advised of the premises therein, the Court issued an oral order at the end of the Hearing. The Court incorporates its oral order into the following Order outlined below:

Findings of Fact

1. This Matter came before the Court on November 1, 2024, for a Hearing on the Petition for Writ of Habeas Corpus.

2. Prior to the Hearing, Counsel for the Petitioner and Intervenor filed a joint Motion to dispense with the evidentiary hearing, and to proceed with legal argument only.
3. Counsel stipulated to the facts in this case, and the Court incorporates into this Order the facts contained in both Petitioner and Intervenor's briefs.
4. The Court provides an overview of the history of Mr. Lopez's cases that gave rise to the filing of this Habeas Petition for purposes of clarity in the Court's Order below.

Case E109815:

5. Mr. Lopez was first cited on December 18, 2019. Mr. Lopez was cited for Trespass, a Class 2 municipal offense in the City of Pueblo, punishable by up to \$1000 in fines but not by jail. P.M.C. §§ 11-1-406; 11-1-103(c).
6. The summons directed Petitioner to appear in Pueblo Municipal Court on January 21, 2020, at 1:30 PM. Petitioner failed to appear, and a failure to appear ("FTA") warrant was issued by the Court. At that time, according to the parties' stipulated facts, all FTA warrants were a zero-dollar PR bond.
7. On March 13, 2020, Petitioner was appointed a defense attorney, who was provided a copy of the Trespass ticket and the Court's "Jail Advisement Sheet" which listed all pending charges against Petitioner. His case was continued for a mandatory pre-trial conference ("PTC") on March 25, 2020, at 1:00 PM. Petitioner was ordered released on a PR bond.
8. Thereafter, the Court was shut down due to the COVID pandemic, and Petitioner's case was re-set to May 6, 2020.
9. On May 6, 2020, Mr. Lopez was due in court on E109815. When he missed his court date, the Pueblo Municipal Court, upon the request of the City Attorney, issued a warrant for his arrest. See Pre-trial Disposition Form, Exhibit F.
10. The Pueblo Municipal Court initiated its first contempt citation against Mr. Lopez by way of a handwritten note on the bottom of a proposed plea agreement prepared by the City Attorney. The City Attorney wrote at the top of the proposed plea agreement that Mr. Lopez had failed to appear.
11. The Court signed the proposed plea, even though Mr. Lopez had not appeared, circled "approved," and wrote "issue contempt – default."

12. This notation created case number E109815FC. Mr. Lopez was never provided a charging document for E109815FC.

Case E114609

13. On June 2, 2020, Mr. Lopez was cited for living in an unsafe structure, a Class 1 municipal offense. P.M.C. §§ 4-8-4; 4-8-8. Petitioner was advised of his warrants and was provided a PR bond and ordered to appear in Court on July 7, 2020.

14. On July 7, 2020, after Mr. Lopez had missed another court date, the Court wrote in the electronic comments: "Def FTA for WR. Issue contempt warrant with no bond hold." The Court issued a contempt warrant with a no bond hold.

15. This notation created case number E109815FD, which was a contempt proceeding initiated for his failure to appear in Court.

16. Mr. Lopez was not provided a charging document for this Municipal Contempt offense.

17. Mr. Lopez was contacted by the Pueblo Police Department in August of 2020. The warrants were cleared by Pueblo Police, and he was issued a PR bond and a new court date for the Trespass and Living in an Unsafe Structure case, as well as for the contempt citations.

18. Both charges were listed on the bond, but only one court date and time was specified – September 29, 2020. The Municipal Contempt charges were not listed on the bond.

19. On September 29, 2020, Petitioner did not appear. The following notation appears in the electronic comments: "Def FTA warrant return, Judge Sikes issues warrant, contempt with no bond hold."

20. This notation, written by the court clerk, created two new cases based on contempt charges – E109815FE and E114609FC – both Class 1 municipal offenses.

21. Mr. Lopez was not provided a charging document for these Municipal Contempt offenses.

22. Although only one (1) court date was missed, because he had two underlying citations, Petitioner was exposed to two more years in the county jail, pursuant to P.M.C. 1-6-12(e), which qualifies contempt as a Class 1 Municipal Offense punishable by up to 364 days of jail each.

23. The Pueblo Police Department issued Mr. Lopez another personal recognizance bond and a new court date in November 2020. On November 10, 2020, Petitioner had police contact where he was advised on the Municipal warrants. The warrants were cleared, and he was provided a PR bond.

24. The Municipal Court closed for the month of December, due to the COVID-19 pandemic. A notice of the new return date was mailed to Petitioner's address listed in the Court file. See notice of Court Appearance, Exhibit K.

Case number E118619

25. On January 11, 2021, Mr. Lopez was again charged with Trespass.

26. Because this Trespass charge was his third charge, Mr. Lopez was subject to the Pueblo Municipal Code's habitual offender ordinance, which makes otherwise non-jailable Class 2 municipal crimes Class 1 municipal crimes when a person has two prior convictions for the same crime. See P.M.C. § 1-2-1(g) " Every person convicted in the City of any municipal offense, when within five (5) years of the date of the commission of said offense has been twice previously convicted of the same offense, separately brought and adjudicated and arising out of separate and distinct criminal episodes in the City, shall be adjudged a habitual offender and shall be punished: (1) As a Class 1 municipal offender and the standard base fine for the offense shall be tripled, provided that the fine may be altered at the Court's discretion, but shall not exceed one thousand dollars (\$1,000.00)..."

27. Mr. Lopez then faced up to almost two years in jail on the three alleged municipal offenses for which he was actually charged and up to almost four more years in jail on the Municipal Contempt prosecutions for failing to appear that were notated in electronic court comments, without charging documents.

28. On January 25, 2021, Mr. Lopez called the Municipal Court to find out his next court date, which he learned was set for the following day.

29. Mr. Lopez did not appear for his January 26, 2021, court date. The Court issued a contempt warrant and a no bond hold.

30. On January 26, 2021, a clerk wrote in the electronic comments: "Def FTA BW issue per court policy." This notation created two new cases – E109815FF and E11409FD – both Class 1 municipal charges.

31. Mr. Lopez was not provided a charging document for these alleged Municipal Contempt offenses. Mr. Lopez then faced almost eight years in county jail, most of which stemmed from Municipal Contempt prosecutions.

32. On February 26, 2021, Petitioner again had police contact at which time he was advised of his Municipal Warrants. The warrants were cleared, and he was ordered to appear on March 23, 2021.
33. Mr. Lopez again missed the March 23, 2021, court date. A municipal clerk wrote in the electronic comments: "Def FTA warrant return, Judge Jones issues warrant, contempt with no bond hold." This notation created two more Class 1 municipal charges – E109815FH and E114909FD.
34. Mr. Lopez was not provided a charging document for these alleged Municipal Contempt offenses. Mr. Lopez now faced almost ten years in the county jail, almost all of them for crimes for which he had never been served a Complaint or other charging document.
35. In July of 2021, Petitioner again had police contact. Instead of taking Petitioner to Court to appear before a Judge and request bail, he received another personal recognizance bond from the Pueblo Police Department, summoning him to court on August 17, 2021. Like all the previous bonds, that bond does not mention any Municipal Contempt charges.
36. Mr. Lopez missed this court date. Again, the notation of a court clerk – "Def FTA BW issued per court policy" – created three more criminal charges for Municipal Contempt – E109815, E114609FF, and E118619FC. These three separate crimes were all charged based on the same missed court date.
37. Mr. Lopez was not provided a charging document for these alleged offenses. Now, Mr. Lopez faced almost thirteen years in the county jail, almost all for the court-initiated contempt proceedings.

Case No. E123255

38. In September 2021, Petitioner was again charged with Trespass in case E123255, which was treated as a Class 1 municipal offense because of his potential status as a habitual offender, as outlined above.
39. The Summons directed him to appear in Court on October 19, 2021. Petitioner failed to appear, and the Court issued a Failure to Appear Bond with an automatic zero-dollar PR bond.
40. Petitioner had no further contact with police until August of 2022, when he was given another personal recognizance bond and another new court date.

41. On the morning of his next court date, September 20, 2022, Mr. Lopez called the Municipal Court to ask if he could change the date of his next court appearance, as he had secured work that required him to be out of town.
42. Mr. Lopez did not come to court, the clerk wrote “Def FTA WR BW to issue per court policy.” And once again, Class 1 Municipal Contempt charges resulted from the notation – four of them this time, E109815FI, E118619FD, E114609FG, and E123255FC.
43. Although he had been set only one court date, he received four new citations for his singular failure to appear. Again, Mr. Lopez was not provided a charging document for these four new alleged Municipal Contempt offenses. Mr. Lopez now faced almost seventeen years in the county jail, predominantly as a result of the Municipal Contempt notations.
44. Mr. Lopez was contacted again by the Pueblo Police Department in October 2022. He was issued a personal recognizance bond and issued a new court date for October 25, 2022, with no mention of the contempt charges he was facing.
45. Mr. Lopez failed to appear on the October 25 court date. A clerk noted “Def FTA WR FW issue per court policy,” and four more Class 1 municipal offenses appeared on the electronic record – E109815FJ, E114609FH, 6 E118619FE, and E123225FD.
46. Once again, Mr. Lopez was not provided a charging document for these four new alleged Municipal Contempt offenses for missing the single October court date. Mr. Lopez now faced twenty-one years in the county jail, almost all for missing court dates.
47. Mr. Lopez was arrested around November 5, 2022, and detained in the Pueblo County Jail.
48. On November 7, 2022, when Mr. Lopez was due to appear in Municipal Court, the Pueblo Municipal Court’s computer system was down so Mr. Lopez was released on a personal recognizance bond. His next court date was set for November 16, 2022.
49. At the time of his release, Petitioner was directed to appear on November 16, 2022. Mr. Lopez received an appearance bond with a handwritten notation that said “contempt.”
50. The bond/handwritten note did not tell him how many counts he was facing, the date, location, or nature of the alleged contempt, or reference any ordinance, statute, or rule that would provide him with notice of the charges.

51. Mr. Lopez missed his November 16, 2022, court date. Two days later, the court clerk wrote in the electronic notes “Def FTA’d mandatory pretrial, warrant requested,” and four more Class 1 municipal offenses were created – E109815FK, E114609FG, E119619FF, and E12355FE.
52. Mr. Lopez was not provided a charging document for these four new alleged contempt offenses stemming from the November 16 missed court date. Mr. Lopez now faced almost twenty-five years in the county jail.
53. Mr. Lopez was arrested again on May 9, 2023. This time, the Municipal Court held a hearing and set bail.

Petitioner Pleads Guilty:

54. On May 9, 2023 the Petitioner had police contact, was advised of his municipal warrants, arrested, and taken to the Pueblo County Jail.
55. He was placed on the jail advisement docket on May 10, 2023, and appointed a defense attorney. The attorney was provided the following information prior to the advisement docket: a list of pending charges and information regarding bond. See Exhibit V. These documents set forth all charges pending in each case. The Court imposed bond of \$700 per case, for a total of \$2,800 and set the matter over for a PTC on May 17, 2023.
56. On May 17, 2023, Mr. Lopez pled guilty in three Trespass cases, one unsafe structure case, and twenty-three cases of contempt that had never been formally charged by way of a Complaint or other charging document. He was facing twenty-five years in the county jail, with only three possible years of that time stemming from crimes that the City had charged.
57. The City Attorney offered Mr. Lopez a plea deal of twelve months of probation on every contempt charge, each with a \$100 fine, ten hours of mandatory community service, and 15 days of jail suspended pending his completion of probation.
58. Altogether, Petitioner agreed to 12 months’ probation, \$3,350 in fines plus court costs, 335 mandatory community service hours, and 335 days of suspended jail. He was released from custody and directed to report back to Municipal Court within 48 hours to check in with probation and get a new review hearing date.
59. All the suspended jail time – which would be imposed if Petitioner did not finish probation—came from the contempt charges.

60. None of the contempt cases had been charged by way of an official Complaint or other charging document from the City Attorney or the Court.

Case No. E136315.

61. On July 8, 2023, the Petitioner received a ticket for Trespass. The summons directed him to appear at the Pueblo Municipal Court on August 1, 2023, at 1:30 PM. Petitioner appeared, was arraigned by the Court, and plead not guilty. He was assigned defense counsel, and set for a PTC on August 9, 2023.

62. On August 1, 2023, Mr. Lopez met with Pueblo Municipal Court Probation.

63. On August 23, 2023, Mr. Lopez appeared, and his cases were set for a probation revocation hearing.

64. On September 1, 2023, Petitioner appeared with his counsel and entered a not guilty plea in case E136315, and the matter was set for trial on September 29, 2023. Petitioner's other cases were set for a probation hearing on the same date. On September 7, 2023, Case E136315 was dismissed pursuant to a pre-trial disposition; however, the hearing remained set in the other cases.

65. On September 29, 2023, Mr. Lopez called the court clerk and said he would be late to the hearing. He then failed to appear. The court clerk marked him as failing to appear and notated in the electronic comments: "Def FTA warrant to issue, \$250 cash only bond per case."

66. Once again, four more Class 1 municipal charges for contempt appeared in Mr. Lopez's record – E109815FL, E114609FJ, E118619FG, and E123255FF. Mr. Lopez was not provided a charging document for these four new alleged contempt offenses for missing the September 29 court date.

67. As a result, Mr. Lopez faced not only his suspended jail sentence of 335 days, but also four more years in county jail, because he had missed an additional court date.

68. Pueblo Police contacted Mr. Lopez in October of 2023, was advised of the warrants, given a PR bond, and issued another court date, November 21, 2023.

69. In the interim, Petitioner was charged with Trespassing on November 7, 2023 (E138682), with Trespassing and Living in an Unsafe Structure on November 9, 2023 (E139739), and Trespassing on November 20, 2023 (E138953).

70. On November 21, 2023, Mr. Lopez did not appear for his court date. He called the court that morning asking to reschedule but was told he could not.

71. Although the court comments include “Def FTA WR BW issue per court policy,” no contempt cases appear to have been created by this notation.
72. On December 5, 2023, Mr. Lopez appeared in court and all of his cases were set for hearing on December 20, 2023. According to the court file, on December 18, 2023, Mr. Lopez called the court and asked for his court date. On December 20, 2023, Mr. Lopez did not come to court.
73. On December 21, 2023, a court clerk wrote in the electronic comments: “BW issued per Judge.” This time, four new Municipal Contempt charges were created by the notation – E109815FM, E114609FK, E119619FH, and E123255FG. Mr. Lopez was not provided a charging document for these four new alleged offenses for missing the December court date.
74. Mr. Lopez now faced his suspended jail sentence of 335 days, almost four years on charges filed by the City, and eight additional years in jail for two missed court dates. Petitioner was arrested less than a month later, on January 16, 2024, and placed on the jail advisement docket on January 17, 2024.

Petitioner’s Sentencing.

75. On January 24, 2024, Mr. Lopez took a plea deal that included 31 counts of Municipal Contempt. Petitioner was represented by defense counsel. At that time, defense counsel was provided with Notice of Pre-trial Conference Date, list of all charges in pending cases, Mittimus to Jail listing all pending charges, and copies of the tickets. See Exhibit FF.
76. The plea agreement, as approved and imposed, sentenced Mr. Lopez to 575 days of jail. Of that, 335 days were imposed based on his failure to complete probation, and 240 days were imposed on the contempt cases that had originated from two missed court dates – September 29, 2023, and December 20, 2023.
77. The plea agreement imposed 90 days, running concurrently, on the three Trespass charges. Almost all of Petitioner’s sentence stems from prosecutions initiated by the Municipal Court without any charging documents.

Legal Analysis

I. Habeas Corpus Standard.

78. C.R.S. § 13-45-102 provides that,

“When any person not being committed or detained for any criminal or supposed criminal matter is confined or restrained of his liberty under any color or pretense whatever, he may proceed by appropriate action as prescribed by the Colorado rules of civil procedure in the nature of habeas corpus which petition shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his imprisonment and wherein the illegality of such imprisonment consists, and in whose custody he is detained.” C.R.S. § 13-45-102.

79. Venue for Habeas relief is proper in any District Court in Colorado. *Stilley v. Tinsley*, 385 P.2d 677, 688 (Colo. 1963).
80. “The purpose of a Habeas Corpus proceeding is to determine whether a person is unlawfully restrained of his liberty.” *Johnson v. Black*, 322 P.2d 99 (Colo. 1958).
81. Under C.R.S. § 13-45-103, the Habeas Court is required to proceed in a “summary way to settle the facts by hearing the testimony and arguments of all parties interested civilly, if there are any, as well as of the prisoner and the person who holds him in custody and shall dispose of the prisoner as the case may require...”
82. Generally, where a court has jurisdiction of the subject matter and the person, but has entered an erroneous judgment, it retains jurisdiction to correct, modify and alter it. *See Hart v. Best*, 205 P.2d 787, 790 (Colo. 1949), *overruled in part by Stilley v. Tinsley*, 385 P.2d 677 (1963).
83. Habeas relief, however, is appropriate when the Court’s sentence was void because it lacked subject matter jurisdiction, or personal jurisdiction, over the contemnor. *Id.* at 790-91 (*See also Cooper v. People ex. rel. Wyatt*, 22 P. 790, (Colo. 1889) “Thus it will be seen that contempt orders and judgments are not ordinarily revisable for mere error, but may be set aside for want of jurisdiction of the court over the subject matter, over the defendant, or to render the particular judgment or order complained of.”
84. “Void judgments are subject to attack by use of Habeas Corpus.” *Ryan v. Cronin*, 553 P.2d 754, 755 (Colo. 1976). A judgment is void for purposes of Habeas Corpus relief when the court lacks jurisdiction over the subject matter or over the person. *Mulkey v. Sullivan*, 753 P.2d 1226, 1232 (Colo. 1988).
85. “The application for the writ . . . must plead facts which, if true, show either (1) that the trial court had no jurisdiction of the person of the defendant, or (2) that the trial court had no jurisdiction of the offense charged, or (3) that the sentence imposed was not within the limits prescribed by law.” *Titmus v. Tinsley*, 384 P.2d 728, 730 (Colo. 1963).

II. Pueblo Municipal Code.

86. In 2017, the City of Pueblo codified contempt as a substantive offense. See P.M.C. § 1-16-12(a). The City's codification of contempt is separate from a Court's inherent contempt powers, which the City still recognized under subsection (f) of the same statute, "[n]othing in this section shall be construed to alter or diminish the inherent authority of the Municipal Court to conduct its judicial proceedings or to enforce its orders through civil or criminal contempt proceedings." P.M.C. § 1-16-12(a).

87. Pueblo Municipal Code (hereafter "the Code") identifies four (4) different types of contempt:

- (1) Disobedience or resistance of any person to or interference with any lawful writ, process, order, rule, decree, or command of the Municipal Court; or
- (2) Failure by any person, without adequate excuse, to obey a summons, subpoena, or court order; or
- (3) Any act or omission of a person which is offensive to the authority or dignity of the Municipal Court or which obstructs or interferes with the administration of justice; or
- (4) Failure by any person to conduct themselves in a manner consistent with the decorum and respect inherent in the concept of judicial proceedings in the Municipal Court. P.M.C. § 1-16-12(a).

88. Pursuant to the Code, the Municipal Court is permitted to initiate contempt proceedings. In this case, the Municipal Court initiated all of Petitioner's contempt charges. Subsection (c)(2) of P.M.C. § 1-6-12 states,

"(1) When it appears to the Municipal Court that a contempt has been committed out of the presence of the Municipal Court, the Municipal Court may *ex parte* order the person so charged to appear at a designated time and show why he or she should not be punished for contempt. **The order shall set forth generally the facts giving rise to the contempt and shall be served upon such person within a reasonable time before the time designated for the Court appearance...**" P.M.C. § 1-16-12(c).

89. It is undisputed that no Complaint, Citation, or other written Order, was served on the Petitioner setting forth the time, date, location, general facts surrounding the contempt citation, and/or otherwise advising the Petitioner of the nature of the contempt citation. To the contrary, the contempt proceedings were initiated by a handwritten note of the presiding municipal judge, or by a clerk's notation, and then the issuance of an arrest warrant.

90. Municipal Contempt is classified under the Code as a Class 1 municipal offense. P.M.C. § 1-16-12(e), punishable by up to a \$1,000 fine and 364 days in jail. Here, jail was used as the punishment for contempt.
91. The Code also recognized, defined, and codified direct and indirect contempt. See P.M.C. § 1-16-12(b) and (c).
92. To that end, the City argues that the Petitioner's contempt proceedings were the result of the Court's inherent contempt powers, rather than under the substantive offense listed in the code.
93. The City's argument, however, underscores the procedurally deficient nature in which the Municipal Court proceeded. Without a formal Complaint – or any other formal charging document – the Petitioner (and this Court) would not know whether the City was proceeding under P.M.C. § 1-16-12(c), or under the City's inherent contempt powers. That distinction was never made clear in the Petitioner's cases.
94. To the extent that the City was proceeding under P.M.C. § 1-16-12(c) – which is what appears to have occurred in Petitioner's cases, given the imposition of jail sentences – the City failed to comply with the Colorado Municipal Court Rules of Procedure requirement of a Complaint. See C.M.C.R.P. 201.
95. To the extent that the City argues that the Court was proceeding under its inherent contempt powers, that also does not alleviate the Court's requirement to comply with procedural due process requirements, as outlined further below.
96. Colorado Courts have recognized that the inherent, criminal nature of contempt proceedings require heightened procedural due process.
97. Finally, the City cannot circumvent the Code's procedural requirements by arguing that the Petitioner's failure to appear was an issue of direct contempt, thus allowing the Court to summarily sentence a contemnor.
98. Colorado Courts have recognized that failure to appear "at best, [is] an indirect contempt." (See *In re: Marriage of Johnson*, 939 P.2d 479 (Colo.App. 1997) quoting *Dooley v. District Court*, 811 P.2d 809 (Colo. 1991)).
99. The essential element of the offense of failure to appear is the inadequacy of the explanation for the absence, or the intent of the party who failed to appear – that is, the Court must find that the contemnor had the willful intent to inconvenience and delay the court. *Id.* Matters involving a party's intent or willfulness are matters which are outside the knowledge of a judge, and, therefore, a hearing must be held in

order to determine the facts. See: *Marriage of Johnson*, 939 P.2d 479, (Colo.App.1997).

100. Therefore, for the foregoing reasons, the City cannot argue that this was an issue of direct contempt for which the Court was summarily sentencing the Petitioner.

101. It is undisputed that this was an issue of indirect contempt, and therefore, proper due process procedures had to be followed.

III. The Colorado Municipal Court Rules of Procedure:

102. C.R.S. § 13-10-112(1) provides that, “The municipal judge of any municipal court has all judicial powers relating to the operation of his court, subject to any rules of procedure governing the operation and conduct of municipal courts promulgated by the Colorado Supreme Court.”

103. To that end, the municipal judge’s authority is limited to, “**local rules of procedure consistent with any rules of procedure adopted by the Colorado supreme court.**” See C.R.S. 13-10-112(1)(emphasis added).

104. The Colorado Municipal Court Rules of Procedure (“C.M.C.R.P”) are promulgated by the Colorado Supreme Court.

105. Rule 201 of the C.M.C.R.P. states, “these rules shall govern the procedure in all municipal charter and ordinance violation cases.”

106. Subsection 204(a), C.M.C.R.P. states that prosecution of a violation shall be commenced in one of the following four (4) ways:

- I. Issuing a summons and complaint;
- II. Issuing a summons following the filing of a complaint;
- III. The filing of a complaint following an arrest; or
- IV. The filling of a summons and complaint following an arrest.

107. The C.M.C.R.P. addresses the sufficiency of the Complaint. Subsection (b)(4) states that,

“The complaint shall contain the name of the defendant; the date and approximate location of the offense; identification of the offense charged, citing the charter or ordinance section alleged to have been violated; and a brief statement or description of the offense charged, which statement or description shall be sufficient if it states the type of offense to which the charter or ordinance relates. The summons and complaint shall contain all the foregoing information and shall also direct the

defendant to appear before a specified court at a stated date, time, and place, or in the office of the court clerk or violations bureau as provided in subsection (5) below.”

108. Generally, the purpose of the requirement for serving process and a copy of complaint upon a defendant is to give that party notice of the commencement of the proceedings so that the party has an opportunity to attend and to prepare a defense. *Swanson v. Precision Sales and Service, Inc.*, 832 P.2d 1109 (Colo. App. 1992).
109. To that end, C.M.C.R.P. 212(d) address defenses and objections to the sufficiency of a complaint, highlighting the importance of notice, and the ability to prepare a defense. See C.M.C.R.P. 212(d), “Lack of jurisdiction or the failure of the complaint or summons and complaint to charge an offense shall be noticed by the court at any time during the proceeding.”
110. Here, as previously mentioned, it is undisputed that no Complaint, Citation, or other charging document, was ever generated by the Municipal Court, or the City Attorney’s Office, and served upon the Petitioner in these proceedings.
111. The City argues, however, that it does not need to follow the Code, because these proceedings are initiated as the result of the Court’s inherent contempt powers, as opposed to the Code.
112. The Court rejects this argument for several reasons.
113. First, as previously mentioned, the Court cannot use its direct contempt powers for a Defendant’s failure to appear. Colorado Courts recognize failure to appear as an indirect contempt issue, and it cannot be summarily punished by the Court.
114. To that end, the *Razatos* Court has pointed out that indirect contempt requires that the alleged contemnor must be “given notice of the purpose of the hearing, including the nature of the acts of contempt that have been alleged to have committed.” *People v. Razatos*, 699 P.2d 970 (Colo. 1985). Here again, the Petitioner was not given any notice of the acts of contempt that he was alleged to have committed.
115. Second, the Court is not aware of any legal process, nor does the City cite any legal authority, whereby the City can create a code, and then not be required to follow its own Code.
116. Title 13 requires the City to follow the C.M.C.R.P., and the City cannot point to any provision that allows them to “opt out” of the Rules of Procedure.

117. In the alternative, the City argues that, under the totality of the circumstances and the documents that Petitioner received, Petitioner received sufficient notice and procedural due process. (i.e., by receiving the warrant, PR bond paperwork, the mittimus, pre-trial disposition packet, Judge’s handwritten note stating, “issue contempt-default”, and oral advisement, the Petitioner received sufficient notice).
118. However, in reviewing the City’s Exhibits, none of these documents standing alone, or in combination, meet the requirements of C.M.C.R.P. 204 – that is, no document contains a description of the date, location, identification/citation of the offense charged, including the specific subsection being charged, and a statement/description of the offense. Additionally, no oral advisement given by the Court meets all the requirements of C.M.C.R.P. 204.
119. That is, even considering the Court file and record as a whole, it does not comport with the City’s own requirements for sufficient notice under C.M.C.R.P. 204(b)(4). Therefore, the Court cannot find that the Petitioner was afforded sufficient notice and due process, and the Court is not persuaded by this argument.

IV. Procedural Due Process

120. At the outset, the Court finds that contempt proceedings that implicate substantial jail sentences require basic procedural safeguards. *See Bloom v. State of Ill.*, 391 U.S. 194, 201 (1968) stating, “[The] Constitution guarantees right to jury trial in state prosecutions for contempt just as it does for other crimes.”
121. To that end, the *Bloom* Court noted, “Criminally contemptuous conduct may violate other provisions of criminal law; but even when this is not the case convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual is the same. Indeed, the role of criminal contempt and that of many ordinary criminal laws seem identical – protection of the institutions of our government and enforcement of their mandates.” *Id.* at 1481-1482.
122. In the *Bloom* case, the Petitioner was convicted of criminal contempt, and sentenced to 24 months jail, for willfully admitting to probate a falsely prepared and executed will following the decedent’s death. *Id.* at 195. The *Bloom* Court found that, “Given that criminal contempt is a crime in every fundamental respect, the question is whether it is a crime to which the jury trial provisions of the Constitution apply. We hold that it is, primarily because in terms of those considerations which make the right to jury trial fundamental in criminal cases, there is no substantial difference between serious contempts and other serious crimes. Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power.” *Id.* at 202.

123. Here, like the *Bloom* case, the Petitioner was facing years, even decades, in jail as the result of the contempt citations. The Municipal Court imposed lengthy contempt sentences that were run consecutive to the Petitioner's underlying offenses. This Court finds that this type of sentencing triggers basic due process requirements contemplated in *Bloom*.
124. To the extent that the contempt sentences were imposed pursuant to the Court's inherent contempt powers, as noted by the *Bloom* Court, the Court's inherent contempt powers require heightened procedural due process requirements, not lower procedural due process requirements, to protect against the "arbitrary exercise of official power." *Id.* at 202.
125. Colorado Courts have held that while there is no fixed procedural formula for contempt proceedings, the polestar in determining the validity of the procedures is whether due process of law is accorded. *In re: Marriage of Peper*, 38 Colo.App. 177, 180, 54 P.2d 727, 730 (1976). To that end, "[e]ssential to due process in contempt proceedings is the right of one to know that the purpose of the hearing is the ascertainment of whether he is guilty of contempt." *Id.*
126. The City also argues that Petitioner's contempt proceedings, were civil, not criminal, in nature. Again, however, the Court is not persuaded.
127. First, as previously mentioned, the City defined Contempt as a Class 1 Municipal Offense in its own Code. The Petitioner was subsequently punished by a lengthy jail sentence, that exceeded some sentences that can be imposed under Title 18 for misdemeanor criminal offenses.
128. These are not remedial sanctions that the Petitioner could purge – i.e., a fine, a specific act, or a sentence to in-home detention. To the contrary, the Court imposed punitive sentences that involved a lengthy sentence to the county jail, exceeding six months.
129. Even assuming, *arguendo*, that the Court considered this civil in nature, the Court still must look to procedural due process requirements regarding civil contempt proceedings.
130. The Court finds C.R.C.P. 107 instructive regarding civil contempt due process. That Rule requires that in indirect contempt proceedings, where punitive sanctions may be imposed:

"[T]he court may appoint special counsel to prosecute the contempt action. If the judge initiates the contempt proceedings, the person shall be advised of the right to

have the action heard by another judge. At the first appearance, the person shall be advised of the right to be represented by an attorney and, if indigent and if a jail sentence is contemplated, the court will appoint counsel. The maximum jail sentence shall not exceed six months unless the person has been advised of the right to a jury trial.”

131. Although the Colorado Rules of Civil Procedure are not directly applicable to municipal cases, this statute provides insight into what procedural due process should be afforded in civil proceedings when the Court is contemplating a punitive sanction.
132. Those safeguards include the right to appoint special counsel, a neutral judicial officer, and the right to a jury trial, if the sentence exceeds six months.
133. Here, no such safeguards existed – the same judicial officer initiated the contempt charges, oversaw the contempt proceedings, accepted the pleas, and sentenced the Petitioner.
134. It is undisputed that the Petitioner was never given an opportunity to have a different judge preside over his case, nor was a special prosecutor appointed, nor was he advised of the right to a jury trial.
135. The City points to *Kourlis v. Port*, 18 P.2d 770, 773 (Colo. App. 2000), as an example of the Court’s inherent contempt powers and ability to sentence accordingly. In that case, the Appellate Court found that the Defendant was not entitled to a jury trial when the contemplated sentence was less than six (6) months jail. *Id.* at 773. The Defendant was sentenced to 60 days of in-home confinement on a second contempt citation for failure to comply with the Court’s Order regarding the operation of an animal shelter. *Id.*
136. Likewise, *Levin v. Anouna*, 990 P.3d 1136 (Colo. App. 1999) involves another factual scenario where the potential stakes were relatively low – i.e., payment of attorneys’ fees and the staining of a garage door. Neither *Kourlis* or *Levin* contemplate the type of procedural due process afforded when the Court is contemplating a lengthy jail sentence.
137. Here, it is unquestionable that the Petitioner’s sanctions were much more severe than in *Kourlis* or *Levin*.
138. Further, while the *Kourlis* Court did not directly address the Complaint or Citation requirement outlined in *Bloom*, the Court did, however, provide guidance on that issue:

"We find *Barron* to be dispositive of this argument, as well. There, the supreme court noted that, while prior cases permitted a criminal contempt to be prosecuted pursuant to a complaint or information, **it is better practice to bring a contempt citation pursuant to C.R.C.P. 107, and the provisions of the rule control the procedure employed regardless of the manner in which the contempt citation is brought.**" *Id.* at 773 quoting *People v. Barron*, 677 P.2d 1370 (Colo. 1984), emphasis added.

139. As such, the *Kourlis* Court recognized the right to a contempt citation, when the Court is contemplating sanctions.
140. Therefore, again, the Court is again not persuaded that the Petitioner was not entitled to a complaint because the proceedings were civil in nature, and/or because the Court was acting on its own inherent contempt authority.

V. Written Complaints are a Jurisdictional Requirement, Which Cannot be Waived by Petitioner or Counsel.

141. "When a charging document is substantively defective, the Court lacks jurisdiction over the defendant and any conviction entered on the associated charge is void." *People v. Curtis*, 498 P.3d 677, 681 (Colo.App. 2001).
142. "A defect in the substance of an information is jurisdictional and may be raised at any time." *Id.* at 681 quoting *People v. Williams*, 984 P.2d 56, 63 (Colo. 1999). See also *Levin v. Anouna*, 990 P.2d 1136, 1138 "It is only if the procedural defect results in a court's attempt to exercise power over a class of cases or persons outside of its authority that such a defect may be said to implicate the court's jurisdiction."
143. To that end, Colorado courts have held that municipal violations require a charging document. See *Sronce v. City*, 32 P.2d 186 (Colo. 1943) ("Briefly stated, this charge is that defendant on September 17, 1931, violated a municipal code adopted July 26, 1927. Nothing more. The particular ordinance involved, if such there be, the chapter, article, or section, the act thereby commanded or prohibited, the thing it is charged defendant did or omitted, all are left to conjecture. Under no statute, system, or rule known to us, is this a charge.")
144. Thus, the Court finds that a written complaint is a jurisdictional requirement for municipal, punitive contempt – not just by virtue of its own code, but according to caselaw.
145. Further, jurisdictional requirements cannot be waived by the parties. See *Morris v. People*, 95 P. 285, "Courts can entertain jurisdiction of cause only in the methods

prescribed by law; and an agreement of the parties in contravention of such provisions has no force or effect.”

146. Therefore, although it is undisputed that the Petitioner had counsel in these proceedings, counsel was not able to waive any jurisdiction defects that existed due to the failure to serve the Petitioner with a complaint or other charging document.

VI. Other Jurisdictions Have Upheld the Requirement of a Charging Document for Indirect Contempt.

147. Other jurisdictions have upheld the requirement of a charging document for indirect contempt proceedings. See *Conley v. Cannon*, 708 Sp.2d 306, 307 (Fla. App. 2 Dist. 1998), where the trial court ordered Wife in a domestic relations case jailed for indirect criminal contempt upon the husband’s civil motion for contempt. In that case, the Wife filed a habeas corpus petition. The appellate court issued an order disapproving the trial court’s “studied indifference to procedural due process” mentioning that the prosecution was evidently conducted in her absence, without substantiation that she had actual notice of the proceedings, with no charging document, and without the benefit of a verbatim record from which review could be sought in this court. *Id.*

148. Similarly, the Florida Court of Appeals also held in *Bresch v. Henderson*, 761 So.2d 449, 451 (Fla.App. 2 Dist.2000), “a person facing indirect criminal contempt charges ... is ... entitled to the full panoply of due process rights afforded to a person ... that meets the fundamental fairness requirements of the due process clause of the Fourteenth Amendment to the United States Constitution. ... Such fundamental fairness includes providing the alleged contemnor with adequate notice and an opportunity to be heard.”

VII. The Municipal Court Had Other Options to Address Petitioner’s Failures to Appear.

149. To the extent that the City argues that it had no other options to address Petitioner’s systemic failures to appear, the Court is again unpersuaded.

150. First, the Court acknowledges that Mr. Lopez failed to appear many times to address his tickets. However, the aggravated nature of his repeated failures to appear is not at issue for this Court.

151. What is at issue is the City’s failure to follow the rules of procedure, which are clearly laid out in the Code. This Court’s analysis and findings would be the same regardless of whether the Petitioner had missed one Court date and been sentenced

to one (1) day of jail on a contempt charge, or whether as here, he failed to appear multiple times and was sentenced to many months in jail.

152. The Court finds that this Order does not render the City helpless. The City could have followed its own Code with respect to initiating contempt proceedings. The Code outlined the proper procedure; however, the City simply chose not to comply with the Code's requirements.

153. Second, the City did not have to repeatedly release Petitioner on a PR bonds pending the outcome of his cases. The Petitioner could have been brought before the Court, the Court could have imposed a reasonable bond based on the history of failures to appear, and a timely resolution of his cases could have been ensured.

154. Instead, however, the Petitioner was released on multiple PR bonds over the course of years, and then the City initiated these contempt proceedings when he failed to appear.

155. The City is afforded other lawful, procedural avenues by which to address Petitioner's repeated failures to appear; however, here, the City simply chose not to.


Order

THEREFORE, for the foregoing reasons, the Court hereby finds that the Municipal Court's failure to provide the Petitioner with a Complaint, Citation, or other Charging document, thus deprived the Municipal Court of jurisdiction to act with respect to the contempt charges.

THE COURT hereby finds and Orders that the Petitioner's contempt convictions are void, and the sentences are discharged.

THE COURT hereby grants the Petitioner's Writ of Habeas Corpus and makes the Writ absolute.

So Ordered this 13th Day of November, *nunc pro tunc* November 1, 2024.



Michelle Chostner
District Court Judge