

There are many cases where a person was convicted and put into prison, then upon discovery of a lack of subject matter jurisdiction, submitted a *habeas corpus* based upon the jurisdictional defect, and was released.

Subject matter jurisdiction involves more than having the right offense for the right court. Even if the court has jurisdiction over the type, class or grade of crime committed, it will still lack subject matter jurisdiction if the law which the crime is based upon is invalid, void, unconstitutional, or nonexistent.

Jurisdiction over the subject matter of action is essential to power of court to act, and is conferred only by constitution or by valid statute.¹³

The court must be authorized to hear a crime, and have a valid law that creates a crime. Thus the crux of subject matter jurisdiction is always the crime or offense. If a law is invalid there is no crime; if there is no crime there is no subject matter jurisdiction.

If a criminal statute is unconstitutional, the court lacks subject-matter jurisdiction and cannot proceed to try the case.¹⁴

In a case where a man was convicted of violating certain sections of some laws, he later claimed that the laws were unconstitutional which deprived the county court of jurisdiction to try him for those offenses. The Supreme Court of Oregon held:

If these sections are unconstitutional, the law is void and an offense created by them is not a crime and a conviction under them cannot be a legal cause of imprisonment, for no court can acquire jurisdiction to try a person for acts which are made criminal only by an unconstitutional law.¹⁵

In Wisconsin a case involved a charge for violating a law which had actually been repealed. There was a motion hearing on the issue of whether the court had subject matter jurisdiction, and the Supreme Court held:

Where the offense charged does not exist, the trial court lacks jurisdiction.¹⁶

In a case in Minnesota, a man was charged with the offense of "Being an Habitual Offender." But the statute did not make this a crime it only increased the punishment for a crime. The State Supreme Court said the man could not be convicted of a crime because the statute used did not state an offense, which meant the "court was without subject matter jurisdiction."¹⁷

An invalid, unconstitutional or non-existent statute also affects the validity of the "charging document," that is, the complaint, indictment or information. If these documents are void or fatally defective, there is no subject matter jurisdiction since they are the basis of the court's jurisdiction.

When a criminal defendant is indicted under a not-yet-effective statute, the charging document is void.¹⁸

The indictment or complaint can be invalid if it is not constructed in the particular mode or form prescribed by constitution or statute (42 C.J.S., "Indictments and Informations," § 1, p. 833). But it also can be defective and void when it charges a violation of a law, and that law is void, unconstitutional or non-existent. If the charging document is void, the subject matter jurisdiction of a court does not exist.

The want of a sufficient affidavit, complaint, or information goes to the jurisdiction of the

13 *Brown v. State*, 37 N.E.2d 73, 77 (Ind. 1941).

14 22 *Corpus Juris Secundum*, "Criminal Law," § 157, p. 189; citing *People v. Katrinak*, 185 Cal.Rptr. 869, 136 Cal.App.3d 145 (1982).

15 *Kelley v. Meyers*, 263 P. 903, 905 (Ore. 1928).

16 *State v. Christensen*, 329 N.W.2d 382, 383, 110 Wis.2d 538 (1983).

17 *State ex rel. Hansen v. Rigg*, 104 N.W.2d 553, 258 Minn. 388 (1960).

18 *State v. Dungan*, 718 P.2d 1010, 1014, 149 Ariz. 357 (1985).