

UNITED STATES DISTRICT COURT FOR THE

[REDACTED])
)
 Plaintiff,)
)
 v.)
)
 [REDACTED], Judge,)
)
)
 Defendant.)

Case No. [REDACTED]

ORDER

Now before the Court is the Writ of Habeas Corpus Ad Subjiciendum According to the Course of the Common Law Arising under Article I Section 9 of the Federal Constitution (Dkt. # 1). Petitioner [REDACTED] filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 on April 25, 2008, the same day he was convicted in his currently pending criminal case, [REDACTED], before the Honorable [REDACTED] United States District Judge for the [REDACTED]. Three days before his conviction, [REDACTED] filed a Notice of Appeal with the United States Court of Appeals for the [REDACTED]. He appeals the denial of three motions to dismiss, filed before the commencement of his criminal trial and asserts essentially the same arguments that he asserts in his § 2241 petition, i.e., that he “has been unlawfully and illegally charged with an Indictment.” Dkt. # 1, at 3. For the reasons set forth below, the Court finds that the petition should be **dismissed without prejudice**.

[REDACTED] filed his petition as a federal pretrial defendant, seeking collateral relief in this Court while his underlying criminal proceeding was pending. Although [REDACTED] has been convicted, his underlying criminal proceeding is still ongoing because he is not scheduled to be sentenced until

██████████. The Tenth Circuit has held that “[t]o be eligible for habeas corpus relief under § 2241, a federal pretrial [defendant] generally must exhaust other available remedies.” Hall v. Pratt, 97 Fed. Appx. 246, 247 (10th Cir. April 7, 2004) (unpublished decision).¹ Judicial economy mandates this exhaustion requirement. Id. at 247. “Allowing federal [defendant]s to bring claims in habeas proceedings that they have not yet, but still could, bring in the trial court, would result in needless duplication of judicial work and would encourage ‘judge shopping.’” Id. at 247-48. Moreover, Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts permits this Court to dismiss a § 2255 motion “if it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief.” Rule 4 is applicable to his § 2241 proceeding under Rule 1(b). Cf. Boutwell v. Keating, 399 F.3d 1203, 1211 (10th Cir. 2005) (noting that a district court has discretion to apply § 2254 Rules to a § 2241 petition); Reynolds v. Gurganus, No. 4:CV-07-675, 2007 WL 1113646 (M.D. Pa. April 12, 2007) (dismissing § 2241 petition pursuant to Rule 4 because the petitioner had “not yet been convicted or even tried of the federal criminal offenses underlying th[e] action.”).

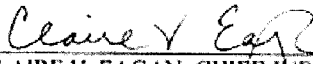
Here, ██████ is clearly is not entitled to relief. He brought his claims in the trial court prior to his criminal conviction, and he is currently appealing the trial court’s denial of his motions to dismiss. Because “[h]abeas proceedings under § 2241 cannot be used as a substitute for a direct criminal appeal,” Veatch v. United States, 105 F.3d 670, 1997 WL 8857, at * 1 (10th Cir. Jan. 10, 1997) (unpublished decision), this Court finds that the petition should be dismissed. Simply put, ██████ has failed to exhaust his available remedies in the trial court and on appeal.

¹ Unpublished decisions are not precedential, but may be cited for their persuasive value. See Fed. R. App. 32.1; 10th Cir. R. 32.1.

IT IS THEREFORE ORDERED that the Writ of Habeas Corpus Ad Subjiciendum According to the Course of the Common Law Arising under Article I Section 9 of the Federal Constitution (Dkt. # 1) is hereby **dismissed without prejudice**.

IT IS FURTHER ORDERED that the Clerk of Court shall close this case.

DATED this 30th day of April, 2008.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT