

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

Raleigh Wayne Irby,)	
)	
Plaintiff,)	
)	
v.)	No. 09 C 7773
)	
People of the State of)	
Illinois, ¹)	
)	
Defendant.)	

MEMORANDUM ORDER

Raleigh Wayne Irby ("Irby") has submitted a handwritten document captioned "Writ of Heabus [sic] Corpus") and referred to hereafter as the "Petition," seeking (1) the dismissal of all state charges against him and (2) his release from what he labels "illegal incarceration." This Court's threshold review, called for by Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts ("Rules"), has revealed that Irby has not satisfied the most critical precondition to invoking federal court relief. Accordingly the Petition and this action are dismissed.

Irby has not used the form of Section 2254 Petition provided by this District Court's Clerk's Office. That procedural matter, like the one mentioned in n. 1, is not of course a ground for

¹ Because this action is a proceeding seeking federal habeas relief, the proper defendant is Petitioner's custodian rather than the "People of the State of Illinois." But this memorandum order will not pause to deal with that or other procedural problems, turning instead to a fatal substantive defect.

dismissal -- but if Irby had employed the form, he might have recognized the substantive problem with his filing.

In relevant part, 28 U.S.C. § 2254(b)(1)(A) bars federal habeas relief to someone in state custody unless "the applicant has exhausted the remedies available in the courts of the State." Irby's filing discloses that he has clearly not done so, apparently in the mistaken belief that he can come here first to seek relief from what he views as a constitutional violation.

This Court expresses no view on the latter subject. Instead it complies with the directive of Rule 4 that "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the Clerk to notify the petitioner." In accordance with that mandate, this Court does indeed dismiss the Petition and this action.



Milton I. Shadur
Senior United States District Judge

Dated: December 21, 2009