

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

ANTHONY WAYNE CILEK,)	
)	
Petitioner,)	
)	
vs.)	CAUSE NO. 2:17-CV-104
)	
WARDEN DAVIES,)	
)	
Respondent.)	

OPINION AND ORDER

This matter is before the Court on the Petition under 28 U.S.C. Paragraph 2241 for Writ of Habeas Corpus filed by Anthony Wayne Cilek, a pro se prisoner, on March 6, 2017. For the reasons set forth below, the Court **DENIES** the habeas corpus petition **WITHOUT PREJUDICE**. The clerk is **DIRECTED** to close this case.

DISCUSSION

Cilek is being held in the Lake County Jail as a pre-trial detainee. He is asking to be released and presumably to have the charges against him dismissed. "Ordinarily the attempt of a state prisoner to obtain federal habeas corpus relief in advance of his state criminal trial [is] completely hopeless." *United States ex rel. Stevens v. Circuit Court of Milwaukee County*, 675 F.2d 946, 947 (7th Cir. 1982). This is one of those ordinary cases. Though the circuit in *Stevens* provided for a narrow exception to entertain

some double jeopardy claims, this case does not present a double jeopardy claim. Here, Cilek argues that he was arrested in violation of the Fourth Amendment. This is a question to be resolved in the first instance by the State trial court or the State Appellate Courts - not this Court. Thus, to the extent that Cilek believes that he has a viable defense to the charges against him, he needs to first present those claims to the State courts - at trial, on appeal, and ultimately to the Indiana Supreme Court. *See Lewis v. Sternes*, 390 F.3d 1019, 1025-1026 (7th Cir. 2004). Therefore this petition will be dismissed without prejudice. Then, after he has presented his claims to the Indiana Supreme Court, he may return to this Court and file another habeas corpus petition challenging the conviction, if necessary.

CONCLUSION

For the reasons set forth above, the Court **DENIES** the habeas corpus petition **WITHOUT PREJUDICE**. The clerk is **DIRECTED** to close this case.

DATED: March 8, 2017

/s/RUDY LOZANO, Judge
United States District Court