

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

SCOTT COLLIN RABB,)	CASE NO. 5:08 CV 2416
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
MICHELE EBERLIN,)	<u>AND ORDER</u>
)	
Respondent.)	

On October 10, 2008, petitioner pro se Scott Collin Rabb filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Rabb seeks to challenge his conviction and sentence on two robbery counts. For the reasons stated below, the petition is denied and this action dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, a petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

It appears evident on the face of the petition that petitioner has not yet sought review of his conviction in the Ohio Supreme Court. Such review may be available, see Ohio Sup.Ct.R.P. II, sec. 2(A)(4)(a), and must be sought in order to exhaust state

court remedies. Rust v. Zent, 17 F.3d 155, 160 (6th Cir. 1994).

Accordingly, the request to proceed in forma pauperis is granted, the petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed. R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.



DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE