IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BENNIE FRANK WITHROW, IV,   )
)
         Petitioner,   )
)
vs.   )   **Case No. 11-CV-390-GKF-FHM**
)
ROGERS COUNTY;   )
JANICE STEIDLEY,   )
)
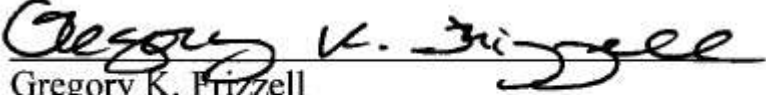   **Respondents.**   )

OPINION AND ORDER

On June 21, 2011, the Court received for filing Petitioner's 28 U.S.C. § 2241 petition for writ of habeas corpus (Dkt. # 1) and motion to proceed *in forma pauperis* (Dkt. # 2). Petitioner is a pretrial detainee and appears *pro se*. By Order filed June 22, 2011 (Dkt. # 3), the Court granted the motion to proceed *in forma pauperis* and directed Petitioner to file a response demonstrating why this 28 U.S.C. § 2241 petition should not be dismissed. See Dkt. # 3. Petitioner's deadline for filing his response was July 22, 2011. Id. Petitioner was specifically advised that "[f]ailure to comply with this Order may result in dismissal of this action without prejudice and without further notice." Id.

To date, Petitioner has failed to file a response as directed by the Court. No correspondence addressed to Petitioner has been returned. The deadline for compliance has passed. Because Petitioner has failed comply with the Court's Order dated June 21, 2011, the Court finds that this action should be dismissed. The Court further finds that, as determined in the prior Order, Petitioner impermissibly seeks intervention by this Court in his criminal proceeding pending in state court. Pretrial habeas corpus relief is not available to prevent a prosecution in state court. See Capps v. Sullivan, 13 F.3d 350, 353 (10th Cir. 1993); see also Braden v. 30th Judicial Circuit Court of

Kentucky, 410 U.S. 484, 489 (1973) (citing Ex parte Royall, 117 U.S. 241, 253 (1886)). This action

shall be dismissed without prejudice.

ACCORDINGLY, IT IS HEREBY ORDERED that the petition for writ of habeas corpus

pursuant to 28 U.S.C. § 2241 (Dkt. # 1) is **dismissed without prejudice**.

DATED THIS 26th day of August, 2011.

Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma