

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

OZELL POUNCIL,

Petitioner,

v.

CASE NO.12-3177-SAC

LABETTE COUNTY DISTRICT COURT,  
et al.,

Respondents.

MEMORANDUM AND ORDER

This matter comes before the court on a civil action filed by a prisoner at the Labette County Jail. Petitioner proceeds pro se, and the court grants leave to proceed in forma pauperis.

The complaint names as defendants the Labette County District Court, Judge Robert J. Fleming, and Timothy Grillot, an attorney. Because the pleading complains of delays in the criminal proceedings and appears to assert a denial of a speedy trial, and because no specific request for relief is made, the court liberally construes this matter as a petition for habeas corpus. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (a court must liberally construe the filings of a party proceeding without an attorney).

Petitioner appears to be a pretrial detainee, and his speedy trial claim appears to arise from ongoing criminal proceedings in the Labette County District Court. Any defense related to those proceedings should be presented in the state district court, and if necessary, to the state appellate courts before it is presented in a federal habeas corpus action. *See Braden v. 30<sup>th</sup> Judicial Circuit*

*Court of Kentucky*, 410 U.S. 484, 489 (1973) (absent special circumstances, federal habeas corpus is not used to determine the merits of a defense to a criminal charge prior to a conviction in the trial court). Accordingly, the court concludes this matter should be dismissed without prejudice to allow the petitioner to pursue relief in the state courts.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is liberally construed as a petition for habeas corpus, and petitioner's motion for leave to proceed in forma pauperis (Doc. 2) is granted.

IT IS FURTHER ORDERED this matter is dismissed without prejudice to allow petitioner to pursue state court remedies.

**IT IS SO ORDERED.**

DATED: This 6<sup>th</sup> day of November, 2012, at Topeka, Kansas.

S/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge