

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

**No. 19-7300**

---

ROBERT HOLLAND KOON, a/k/a Robert Koon, a/k/a Robert H. Koon,

Plaintiff - Appellant,

v.

MICHAEL MCCALL; CHARLES WILLIAMS; LIEUTENANT ROBYN  
TAYLOR; NURSE RICHTER; CHAPLIN BARBER; OFFICER COLLIER;  
ARTISON BROWN,

Defendants - Appellees.

---

Appeal from the United States District Court for the District of South Carolina, at Florence.  
David C. Norton, District Judge. (4:19-cv-00406-DCN)

---

Submitted: January 30, 2020

Decided: February 13, 2020

---

Before GREGORY, Chief Judge, and MOTZ and KEENAN, Circuit Judges.

---

Vacated and remanded by unpublished per curiam opinion.

---

Robert Holland Koon, Appellant Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Holland Koon, a South Carolina inmate, appeals the district court's order denying his motion to reopen following the voluntary dismissal of his civil action. Koon filed his action in the district court in February 2019 and subsequently filed a motion to dismiss his action without prejudice. In response, the magistrate judge issued the following order on April 11, 2019:

The court has received and filed Plaintiff's document entitled "Motion to Dismiss Without Prejudice." Federal Rule of Civil Procedure 41(a)(1)(A) allows a Plaintiff to dismiss their complaint once without leave of court, upon the filing of a notice of dismissal. The court construes your "Motion to Dismiss Without Prejudice" as such a notice. Plaintiff has ten (10) days to notify this court in writing if this is not Plaintiff's intent.

*Koon v. McCall*, No. 4:19-cv-00406-DCN (D.S.C., PACER No. 15).

According to the district court, Koon failed to respond within the 10-day period and the case automatically closed without a court order. The record indicates, however, that Koon filed a motion to withdraw his motion to dismiss, which may not have been properly docketed by the district court. Nonetheless, it is clear that the district court received this motion because the court responded to Koon on April 29, 2019, as follows: "Pursuant to Rule 5, Federal Rules of Civil Procedure[], we received your Motion of Withdrawal of Motion to Dismiss. However, this motion is no longer pending and has been ruled on and this case is closed. The response time ended on April 22, 2019." *Id.* at PACER No. 20. Koon claimed in his June motion to reopen before the district court that he submitted his motion to withdraw to prison officials for mailing on April 17, 2019, within the response

time allotted by the magistrate judge's order under *Houston v. Lack*, 487 U.S. 266, 276 (1988).

Because we cannot locate Koon's initial filing of his motion to withdraw on the district court docket,\* we vacate the district court's order and remand for further findings as to whether Koon withdrew his motion to dismiss within the 10-day period provided by the magistrate judge. We express no opinion as to this issue or the ultimate merits of Koon's claims. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*VACATED AND REMANDED*

---

\* Koon included the motion to withdraw as an attachment to his motion to reopen, which he titled as a motion to alter or amend judgment. *Koon*, PACER No. 21. It is clear, however, that Koon initially filed the motion to withdraw in April 2019. *See id.* at PACER No. 20.