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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY HOWARD,	)	1:13-cv-00206-AWI-SKO-HC
	)	
Petitioner,	)	ORDER GRANTING PETITIONER'S
	)	MOTION FOR VOLUNTARY DISMISSAL OF
	)	THE PETITION (DOC. 4)
v.	)	
	)	ORDER DENYING PETITIONER'S
ON HABEAS CORPUS,	)	REQUEST FOR RETURN OF DOCUMENTS
	)	(DOC. 4)
Respondent.	)	
	)	ORDER DISMISSING THE PETITION
_____	)	WITHOUT PREJUDICE (DOC. 1)
	)	AND DIRECTING THE CLERK TO
	)	CLOSE THE ACTION

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the Court is the Petitioner's request to "rescind" his petition, which is understood by the Court to be a motion for voluntary dismissal of the action. The request was filed on February 21, 2013; the petition was filed on February 8, 2013.

The named respondent has not appeared in the action. Petitioner filed the instant motion for dismissal of the petition on the ground that the petition was filed in this Court by mistake.

1 Subject to other provisions of law, a Petitioner may  
2 voluntarily dismiss an action without leave of court before  
3 service by the adverse party of an answer or motion for summary  
4 judgment. Fed. R. Civ. P. 41(a). Otherwise, an action shall not  
5 be dismissed except upon order of the court and upon such terms  
6 and conditions as the court deems proper. Id.

7 Here, no answer or motion for summary judgment has been  
8 served or filed. Thus, Petitioner is entitled to dismissal.

9 The dismissal of the petition will be denominated as a  
10 dismissal without prejudice. However, Petitioner is forewarned  
11 that there is a one-year limitations period in which a federal  
12 petition for writ of habeas corpus must be filed. 28 U.S.C.  
13 § 2244(d)(1). In most cases, the one-year period begins to run  
14 at the conclusion of direct review. Id. The limitations period  
15 is tolled while a properly filed request for collateral review is  
16 pending in state court. 28 U.S.C. § 2244(d)(2); Nino v. Galaza,  
17 183 F.3d 1003, 1006 (9th Cir. 1999), cert. denied, 120 S.Ct. 1846  
18 (2000). However, the limitations period is not tolled for the  
19 time such an application is pending in federal court. Duncan v.  
20 Walker, 121 S.Ct. 2120, 2129 (2001).

21 Further, Petitioner has requested that the Court number and  
22 return all documents filed in the action. However, the Court  
23 will retain the documents as its record of the action. The  
24 Clerk's office does not provide free copies of documents to  
25 parties.

26 Accordingly, it is ORDERED that:

27 1) Petitioner's motion for voluntary dismissal is GRANTED;  
28 and

1           2) Petitioner's request for return of documents is DENIED;  
2 and

3           3) The petition for writ of habeas corpus is DISMISSED  
4 without prejudice; and

5           4) The Clerk is DIRECTED to close this action because this  
6 order terminates the proceeding in its entirety.

7 IT IS SO ORDERED.

8 Dated: March 14, 2013



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SENIOR DISTRICT JUDGE

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