

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,
Petitioner,
v.
DIRECTOR OF OPERATION
CDCR,
Respondent.

Case No. 1:14-cv-01693-BAM-HC

ORDER GRANTING PETITIONER'S MOTION
FOR VOLUNTARY DISMISSAL OF THE
PETITION FOR WRIT OF HABEAS CORPUS
(DOC. 25)

ORDER DISMISSING THE PETITION
WITHOUT PREJUDICE (DOC. 1),
DISMISSING PENDING MOTIONS AS MOOT
(DOCS. 20-24), AND DIRECTING THE
CLERK TO CLOSE THE ACTION

Petitioner is a state prisoner or detainee confined at the California Health Care Facility who is serving an eight-year sentence imposed in the Kern County Superior Court for assault. (Pet., doc. 1 at 1.) Petitioner is proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting Petitioner's consent in a writing signed by Petitioner and filed by Petitioner on December 1, 2014 (doc. 17). Pending before the Court is the Petitioner's request for

voluntary dismissal of the petition, which was filed on December 18, 2014.

I. Voluntary Dismissal of the Petition

The named respondent has not appeared in the action. Between December 5, 2014, and December 15, 2014, Petitioner filed numerous motions regarding injunctive relief. Petitioner then filed the instant motion for voluntary dismissal of the petition on December 18, 2014.

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

Here, no answer or motion to dismiss has been served or filed. Thus, Petitioner is entitled to dismissal.

II. Disposition

Accordingly, it is ORDERED that:

- 1) Petitioner's motion for voluntary dismissal is GRANTED; and
- 2) Petitioner's pending motions are DISMISSED as moot; and
- 3) The petition for writ of habeas corpus is DISMISSED without prejudice; and
- 4) The Clerk is DIRECTED to close this action because this order terminates the proceeding in its entirety.

IT IS SO ORDERED.

Dated: **February 3, 2015**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE