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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CORY ADAMS,

Petitioner,

v.

BRENDA M. CASH,

Respondents.

No. 2:13-cv-01712 AC P

ORDER

Petitioner is a state prisoner proceeding with assistance of counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Currently before the court is petitioner's request to voluntarily dismiss the petition. ECF No. 13. Respondent has not been served and petitioner has consented to the jurisdiction of the Magistrate Judge. ECF No. 7.

Petitioner filed the instant petition on August 20, 2013. ECF No. 1. On September 10, 2013, the court granted petitioner's request to stay the proceedings to permit petitioner to exhaust ground one in state court. ECF No. 8. The court also required petitioner to notify the court within thirty days of the decision of the state Supreme Court regarding the then pending petition exhausting ground one. *Id.* at 3. Petitioner has now filed a request to voluntarily dismiss the case, indicating that petitioner has received the relief he was seeking in the Butte County Superior Court. ECF No. 13.

Subject to other provisions of law, a petitioner may voluntarily dismiss an action without

1 leave of court before service by the adverse party of an answer or motion for summary judgment
2 or upon stipulation of all parties who have appeared. Fed. R. Civ. P. 41(a). In all other instances,
3 “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court
4 considers proper.” Fed. R. Civ. P. 41(a)(2).


5 Here, respondent has not entered an appearance in the case, much less filed a responsive
6 pleading. Accordingly, petitioner may voluntarily dismiss this petition without leave of court.
7 Fed. R. Civ. P. 41(a). Petitioner, through his legal counsel, has made such a request based on the
8 fact that petitioner has received the relief he sought in the state court. Thus, the court will grant
9 petitioner’s request for dismissal.

10 Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must
11 issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A
12 certificate of appealability may issue only “if the applicant has made a substantial showing of the
13 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in these
14 findings and recommendations, a substantial showing of the denial of a constitutional right has
15 not been made in this case. Therefore, no certificate of appealability should issue.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The Clerk of the Court is directed to administratively re-open the case.
- 18 2. Petitioner’s request to dismiss the petition (ECF No. 13) is granted. Fed. R. Civ. P.
19 41(a); see also Rule 12, Rules Governing Habeas Corpus Cases Under Section 2254. The petition
20 for writ of habeas is dismissed without prejudice.
- 21 3. The Clerk of the Court is directed to close the file.
- 22 4. The court declines to issue a certificate of appealability.

23 DATED: March 17, 2015

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25 ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE
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