

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Walker D. Miller

Civil Action No. 05-cv-02406-WDM-BNB

ANTHONY OWENS,

Applicant,

v.

JOE ORTIZ, Exec. Director, Colorado D.O.C., and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO

Respondents.

ORDER OF VOLUNTARY DISMISSAL

Miller, J.

Applicant Anthony Owens ("Applicant") filed an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket No. 2) on November 28, 2005. On November 27, 2007, Magistrate Judge Boyd N. Boland issued a recommendation (Docket No. 35) that the application be denied. Applicant timely filed an objection to the recommendation (Docket No. 36). Subsequently, on December 30, 2008, Applicant filed a Motion to Withdraw his Application (Docket No. 41) indicating that he believed he should file a Colo. R. Crim. P. 35(a) motion rather than pursue his habeas corpus application. However, because Plaintiff filed a letter (Docket No. 42) requesting guidance as to whether he should file a Colo. R. Crim. P. 35(a) motion or continue with his habeas corpus application, I issued an Order to Show Cause (Docket No. 43) why I should not proceed to rule on his Motion to Withdraw the Application (Docket No. 41). I

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advised Applicant that I construed his Motion to Withdraw as a motion for voluntary dismissal without prejudice. Applicant responded to the Order to Show Cause on February 5, 2009 (Docket No. 44) indicating that he did indeed desire to dismiss his Application without prejudice so that he could pursue his claims in state court.

Accordingly, it is ordered:

1. Applicant's Motion to Withdraw Application (Docket No. 41) is granted.
2. The Application is dismissed without prejudice.

DATED at Denver, Colorado, on February 10, 2009.

BY THE COURT:

s/ Walker D. Miller
United States Senior District Judge