

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00956-BNB

TYREE M. NEAL, SR.,
Petitioner,

v.

RON WILEY, et al.,
Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 29 2009

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

Petitioner Tyree M. Neal, Sr., is a prisoner in the custody of the United States Bureau of Prisons at the Federal Correctional Institution in Florence, Colorado. Mr. Neal initiated this action by filing *pro se* a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. In an order filed on April 27, 2009, Magistrate Judge Boyd N. Boland directed Mr. Neal to cure certain deficiencies if he wishes to pursue his claims in this action. On May 8, 2009, Mr. Neal filed an "Emergency Motion Pursuant to Rule 23(a)" in which he sought an order preventing his transfer outside the territorial jurisdiction of the Court while this action is pending. On May 15, 2009, Mr. Neal filed a "Motion to 'Strike'" asking the Court to strike the instant action in its entirety.

The Court must construe the "Motion to 'Strike'" liberally because Mr. Neal is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Therefore, the Court will construe the "Motion to 'Strike'" as a notice of voluntary dismissal pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Neal “may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” No response has been filed by Respondents in this action. A voluntary dismissal pursuant to Rule 41(a)(1)(A) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. *See* J. Moore, Moore’s Federal Practice ¶ 41.02(2) (2d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The notice closes the file. *See Hyde Constr. Co.*, 388 F.2d at 507. Accordingly, it is


ORDERED that the “Motion to ‘Strike’” filed on May 15, 2009, is construed as a notice of voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A). It is

FURTHER ORDERED that the voluntary dismissal is effective as of May 15, 2009, the date the notice was filed in this action. It is

FURTHER ORDERED that the “Emergency Motion Pursuant to Rule 23(a)” filed on May 8, 2009, is denied as moot.

DATED at Denver, Colorado, this 28 day of May, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

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CERTIFICATE OF MAILING

Civil Action No. 09-cv-00956-BNB

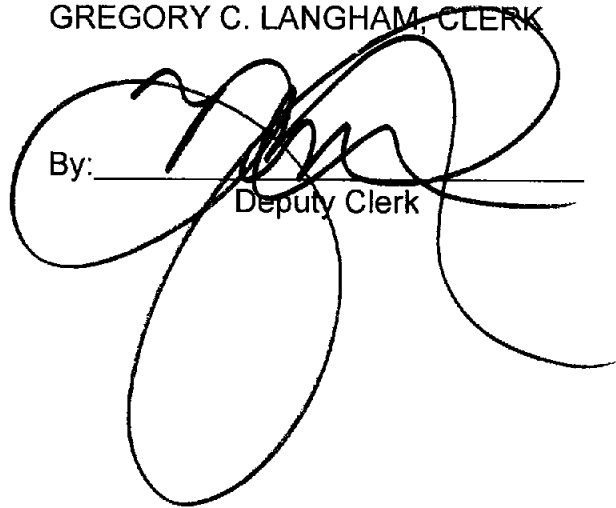
Tyree M. Neal, Sr.
Reg. No. 05534-025
FCI - Florence
PO Box 6000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 5/29/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line, extending significantly above and below it.