

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADOFILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 9 - 2009

GREGORY C. LANGHAM
CLERK

Civil Action No.

09CV01630

WILLIAM HOOVER,

Applicant,

v.

KEVIN MILYARD – SCF Warden, and,
JOHN W. SUTHERS, Attorney General of the State of Colorado.

Respondents.

ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
DISMISSING THE ACTION

Applicant William Hoover, a prisoner in the custody of the Colorado Department of Corrections, has submitted to the Court *pro se* a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action, an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, and a Motion to Dismiss Without Prejudice. The Clerk of the Court will be directed to commence a civil action. The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action will be granted.

In the Motion to Dismiss Without Prejudice, Mr. Hoover asks the Court to dismiss this action because the application contains unexhausted claims. The Court must construe the motion to dismiss liberally because Mr. Hoover 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

dismiss 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. Hoover “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 clerk of the Court commence this civil action. It is


FURTHER ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action filed on June 30, 2009, is granted. It is

FURTHER ORDERED that the Motion to Dismiss Without Prejudice received on June 30, 2009, is construed as a notice of voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1). It is

FURTHER ORDERED that the habeas corpus application is denied and the action is dismissed without prejudice.

DATED at Denver, Colorado, this 8 day of July, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

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FOR THE DISTRICT OF COLORADO

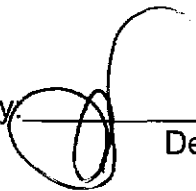
CERTIFICATE OF MAILING

Civil Action No. **09CV01630**

William Hoover
Prisoner No. 123068
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 7/9/09

GREGORY C. LANGHAM, CLERK

By  _____
Deputy Clerk