

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02163-BNB

JERRY L. MASKE,

Applicant,

v.

VALERIE ESTRADA, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT -2 2009

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

Applicant Jerry L. Maske currently resides in Aurora, Colorado. Mr. Maske, acting *pro se*, initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. Upon review of the Application, Magistrate Judge Boyd N. Boland entered an order directing Mr. Maske to file an Amended Application and state on a Court-approved form the specific claims for relief and the specific facts in support of each of the claims.

On September 22, 2009, Mr. Maske filed a Letter with the Court requesting that the instant action be dismissed. The Court must construe the Letter liberally because Mr. Maske is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Rule 41(a)(1)(A) provides that “the [applicant] 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 answer has been filed by

Respondents in this action. Further, a voluntary dismissal under Rule 41(a)(1)(A)(i) 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 Court, therefore, construes the Letter as a Notice of Dismissal filed pursuant to Rule 41(a)(1)(A)(i). The file will be closed as of September 22, 2009, the date the Notice was filed with the Court. **See Hyde Constr. Co.**, 388 F.2d at 507.

Accordingly, it is

ORDERED that the Letter is construed as a Notice of Dismissal filed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and is effective as of September 22, 2009, the date Mr. Maske filed the Notice in this action.

DATED at Denver, Colorado, this 1st day of Oct, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-02163-BNB

Jerry Maske
2705 Danube Way, Unit 101
Aurora, CO 80013

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/2/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk