

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00898-BNB

CHRISTOPHER MICHAEL PRITT,

Applicant,

v.

BRIGHAM SLOAN, Warden, Bent County Correctional Facility, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 05 2010

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

Applicant, Christopher Michael Pritt, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Bent County Correctional Facility. Mr. Pritt initiated this action by filing a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 on April 15, 2010. By order dated April 22, 2010, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action and directed Mr. Pritt to cure certain enumerated deficiencies.

On May 3, 2010, Mr. Pritt filed a motion titled "Motion to Dismiss Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Without Prejudice)." In the Motion, Mr. Pritt states that he seeks a voluntary dismissal because he has not exhausted his state court remedies, and he will re-file in this Court once he has fully exhausted those remedies. The Court must construe the Motion liberally because Mr. Pritt 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). However, the Court should not act

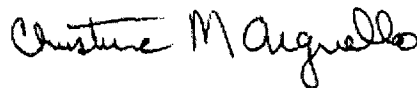
as a *pro se* litigant's advocate. **See Hall**, 935 F.2d at 1110. For the reasons stated below, the Court will construe the Motion liberally as a notice of voluntary dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Fed. R. Civ. P. 41(a)(1) provides that "the plaintiff 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 or motion for summary judgment has been filed by Respondents in this action. Further, a voluntary dismissal under Rule 41(a)(1) 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 Motion, therefore, closes the file as of May 3, 2010. **See Hyde Constr. Co.**, 388 F.2d at 507. Accordingly, it is

ORDERED that the action is dismissed pursuant to Fed. R. Civ. P. 41(a)(1). It is FURTHER ORDERED that the voluntary dismissal is without prejudice and is effective as of May 3, 2010, the date Applicant filed the Motion in this action.

DATED at Denver, Colorado, this 4th day of May, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-00898-BNB

Christopher Michael Pritt
Prisoner No. 93754
Bent County Correctional Facility
11560 Road FF.75
Las Animas, CO 81054-9573

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 5/5/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk