

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 25 2011

GREGORY C. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-03149-BNB

PAUL A. VAUGHN, JR.,

Plaintiff,

v.

CHARLIE DANIEL, [Warden, U.S.P. Florence],
a/k/a CHARLES DANIEL, et. al., and
D. BORGES, [Counselor, U.S.P. Florence],

Defendants.

ORDER DISMISSING CASE

Plaintiff, Paul A. Vaughn, Jr., is a prisoner in the custody of the United States Bureau of Prisons (BOP) who currently is incarcerated at the United States Penitentiary in Florence, Colorado. Mr. Vaughn initiated this action by filing an "Order to Show Cause for a Temporary Restraining Order" and a "Declaration" on December 28, 2010. By order dated January 6, 2011, Magistrate Judge Boyd N. Boland directed Mr. Vaughn to cure certain enumerated deficiencies in the action by filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner Complaint.

On January 18, 2011, the January 6 Order was returned to the Court as undeliverable because it included an incorrect mailing address. By minute order dated January 19, 2011, Magistrate Judge Boland directed the Clerk of the Court to re-mail the January 6 Order to Mr. Vaughn at his correct mailing address. Magistrate Judge Boland also provided additional time for Mr. Vaughn to cure the deficiencies in this action.

On February 23, 2011, Mr. Vaughn filed a document titled, "Praecipe (Writ of Instruction)." In the document, Mr. Vaughn states that he seeks a voluntary dismissal because he "has more important recourse pending with the 4th Circuit Appeals court, and the U.S.D.C. of Abingdon, VA."

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 Defendants 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 Notice, therefore, closes the file as of February 23, 2011. **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 February 23, 2011, the date Plaintiff filed the Notice in this action. It is FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 25th day of February, 2011.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, 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-03149-BNB

Paul A. Vaughn, Jr.
Reg. No. 13336-084
USP Florence
PO Box 7000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on February 25, 2011.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk