

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. 11-cv-02655-BNB

OCT 20 2011

ROBERT J. LANDRUM,

GREGORY C. LANGHAM
CLERK

Plaintiff,

v.

MARCIE DAVIS, Administrator of the Office of Risk Management,

Defendant.

ORDER DISMISSING CASE

Plaintiff, Robert J. Landrum, is a prisoner in the custody of the Colorado Department of Corrections at the Centennial Correctional Facility in Cañon City, Colorado. Mr. Landrum initiated this action by filing *pro se* a Prisoner Complaint (Doc. #1) pursuant to 42 U.S.C. § 1983 alleging that his rights under the United States Constitution have been violated. On October 18, 2011, Mr. Landrum filed a letter to the Court (Doc. #4) asking the Court to disregard and remove the Prisoner Complaint because he intends to refile a new and correct complaint against the correct defendant.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Landrum "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 Defendant in this action. Therefore, the Court will construe Mr. Landrum's letter to the Court filed on October 18 as a notice of voluntary dismissal. 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 letter to the Court (Doc. #4) filed on October 18, 2011, is construed as a notice of voluntary dismissal. It is

FURTHER ORDERED that the instant action is dismissed without prejudice pursuant to the notice of voluntary dismissal. It is

FURTHER ORDERED that the voluntary dismissal is effective as of October 18, 2011, the date the notice of voluntary dismissal was filed in this action.

DATED at Denver, Colorado, this 20th day of October, 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. 11-cv-02655-BNB

Robert J Landrum
Prisoner No. 124611
Centennial Corr. Facility
P.O. Box 600
Cañon City, CO 81215-0600

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on October 20, 2011.

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk