

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01168-BNB

Q ILI-YAAS HAAKEEM FARRAKHAN-MUHAMMAD,¹

Plaintiff,

v.

BLAKE R. DAVIS, Warden,

Defendant.

ORDER DISMISSING CASE

Plaintiff is in the custody of the United States Bureau of Prisons and currently is incarcerated at ADX in Florence, Colorado. Acting *pro se*, Plaintiff initiated this action by filing an Application for a Writ of Mandamus Pursuant to 28 U.S.C. 1361. Magistrate Judge Boyd N. Boland entered an order on May 6, 2013, directing Plaintiff to cure certain deficiencies. On May 28, 2013, Plaintiff filed a Notice of Voluntary Dismissal. The Court must construe the Notice liberally because Plaintiff 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 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” Defendant has not filed an answer in

¹ The Court notes that Mr. Q Ili-Yaas Haakeem Farrakhan-Muhammad, Inmate Register # 02791-088 is the same person as Christopher Mitchell, C. Eli-Jah Hakeem Muhammad, Elijah Hakeem Muhammad, and Caliph Ili-Yas Az-Hakeem Muhammad. The Court further notes that Plaintiff is subject to 28 U.S.C. 1915(g) filing restrictions.

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 8-41 James Wm. Moore et al., Moore's Federal Practice § 41.33(6)(a) (3d ed. 1997); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968).

The Court, therefore, construes the pleading as a Notice of Dismissal filed pursuant to Rule 41(a)(1)(A)(i). The file will be closed as of May 28, 2013, the date the Notice was filed with the Court. See *Hyde Constr. Co.*, 388 F.2d at 507.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he must also pay the full \$455 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Notice of Voluntary Dismissal, ECF No. 4, is effective as of May 28, 2013, the date Plaintiff filed the Notice in this action. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 30th day of May, 2013.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court