

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00393-BNB

GERARDO MARTINEZ,

Applicant,

v.

NO NAMED RESPONDENT,

Respondent.

ORDER DISMISSING CASE

Applicant, Gerardo Martinez, initiated this action by filing *pro se* a Letter regarding a federal probation hold in Denver, Colorado, ECF No. 1. On February 13, 2014, Magistrate Judge Boyd N. Boland entered an order directing Applicant to cure certain deficiencies by filing his claims on a Court-approved form used in filing 28 U.S.C. § 2241 actions and either paying the \$5 filing fee or in the alternative submitting a request to proceed pursuant to 28 U.S.C. § 1915. On March 12, 2014, Applicant filed a Notice and Motion for Voluntary Dismissal of Action Without Prejudice, ECF No. 4.

The Court must construe the Motion liberally because Applicant 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 on the merits or motion for summary judgment 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 Motion as a Notice of Voluntary Dismissal filed pursuant to Rule 41(a)(1)(A)(i). The file will be closed as of March 12, 2014, the date the Notice was filed with the Court. See *Hyde Constr. Co.*, 388 F.2d at 507.

Accordingly, it is

ORDERED that the Notice and Motion for Voluntary Dismissal, ECF No. 4, is construed as a Notice of Voluntary Dismissal filed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and is effective as of March 12, 2014, the date Applicant filed the Notice in this action. It is

FURTHER ORDERED that the action is dismissed without prejudice.

DATED at Denver, Colorado, this 17th day of March, 2014.

BY THE COURT:

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