

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02703-GPG

EDWARD EASTON,

Applicant,

v.

DEBORAH DENHAM, Warden,

Respondent.

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ORDER DISMISSING CASE

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Applicant Edward Easton initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. On October 2, 2014, Magistrate Judge Boyd N. Boland entered an order directing Applicant to cure certain deficiencies by either paying the \$5 filing fee or in the alternative submitting a request to proceed pursuant to 28 U.S.C. § 1915. Applicant then paid the filing fee.

On November 13, 2014, Magistrate Judge Gordon P. Gallagher entered an order directing Applicant to show cause why this action should not be denied because Applicant has an adequate and effective remedy pursuant to 28 U.S.C. § 2255 in the sentencing court. Applicant then submitted a Letter to the Court on November 20, 2014, and asked that the Court construe the Letter as a Motion to Withdraw this Case Number. The Court will construe the Letter as follows.

The Court must construe the Letter 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 Letter as a Notice of Voluntary Dismissal filed pursuant to Rule 41(a)(1)(A)(i). The file will be closed as of November 20, 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 Letter, ECF No. 6, 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 November 20, 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 24<sup>th</sup> day of November, 2014.

BY THE COURT:

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