

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02708-GPG

BRIAN WHITE,

Applicant,

v.

WARDEN/ADMINISTRATOR, FCI FLORENCE, FLORENCE, CO,

Respondent.

ORDER DISMISSING CASE

Applicant, Brian White, is in the custody of the Federal Bureau of Prisons and is incarcerated at the Federal Correctional Institution in Florence, Colorado. He has filed, *pro se*, an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. (ECF No. 1).

On December 17, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. White to show cause, in writing, within 30 days, why the § 2241 Application should not be denied because he has an adequate and effective remedy pursuant to 28 U.S.C. § 2255 to challenge the legality of his federal sentence. (ECF No. 5).

On January 19, 2016, Magistrate Judge Gallagher issued a minute order granting Mr. White's request for additional time to respond to the Order to Show Cause. (ECF No. 7).

On February 4, 2016, Mr. White filed a Motion to Withdraw [the § 2241 Application] Without Prejudice. (ECF No. 8). Mr. White states that he intends to pursue a remedy in

the sentencing court. (*Id.*).

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 responsive pleading has been filed by Respondent 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 Motion to Withdraw, therefore, closes the file as of February 4, 2016. See *Hyde Constr. Co.*, 388 F.2d at 507. Accordingly, it is

ORDERED that the Motion to Withdraw Without Prejudice (ECF No. 8), filed on February 4, 2016, is GRANTED. This action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1). It is

FURTHER ORDERED that the voluntary dismissal is effective as of February 4, 2016. It is

FURTHER ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Action (ECF No. 3), is DENIED as moot.

DATED February 9, 2016, at Denver, Colorado.

BY THE COURT:

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