

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

DAFAYON CHARLES,

Petitioner,

v.

Case No: 2:17-cv-154-FtM-99CM

SECRETARY, DOC,

Respondent.

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**OPINION AND ORDER**<sup>1</sup>

This matter comes before the Court on Plaintiff Dafayon Charles's Motion to Voluntarily Dismiss Petition for Writ of Habeas Corpus ([Doc. #8](#)) filed on August 4, 2017.

[Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)](#), allows a plaintiff to dismiss a case without a court order. The Rule reads in pertinent part:

Subject to Rules 23(e), 23.1, 23.2 and 66 and any applicable federal statute, 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; or
- (ii) A stipulation of dismissal signed by all parties who have appeared.

[Fed. R. Civ. P. 41\(a\)\(1\)\(A\)](#).

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In this instance, the Plaintiff informs the Court that he voluntarily dismisses the Petition without prejudice. No answer or summary judgment has been filed, therefore; the Petition is due to be dismissed without prejudice. Plaintiff is cautioned that while the one year limitation to file a habeas petition is tolled during the state court proceedings, the clock will resume running on his habeas petition once the state court proceedings are final.

Accordingly, it is now

**ORDERED:**

Plaintiff Dafayon Charles's Motion to Voluntarily Dismiss Petition for Writ of Habeas Corpus ([Doc. #8](#)) is **GRANTED**. The Clerk of Court is directed to enter judgment accordingly, terminate any pending motions and deadlines, and close the file.

**DONE** and **ORDERED** in Fort Myers, Florida this 13th day of October, 2017.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies:  
Dafayon Charles  
All Counsel of Record  
SA: FTMP-2