

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

CARL L. BLACKMON,  
Petitioner,

vs.

Case No.: 3:06cv307/RV/EMT

CHARLIE CRIST,  
Respondent.

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**REPORT AND RECOMMENDATION**

This matter is before the court on Petitioner's notice of voluntary dismissal of his habeas petition filed pursuant to 28 U.S.C. § 2254 (Doc. 5). Petitioner requests dismissal of this habeas action without prejudice to his refiling at a future time. As grounds for dismissal, Petitioner states he has not exhausted his state court remedies with respect to his claims (*id.*).

Rule 41(a)(1) of the Federal Rules of Civil Procedure provides that an action may be dismissed without an order of the court by filing a notice of dismissal at any time before the adverse party serves an answer, or files a motion for summary judgment. Because Respondent has not yet served an answer in the instant case, it is clear that Petitioner is automatically entitled to a voluntary dismissal at this time. The dismissal should be without prejudice to Petitioner's refiling the petition when his all of his claims have been exhausted. However, Petitioner should be aware of 28 U.S.C. § 2244(d), which establishes a one year period of limitation for applications for writs of habeas corpus challenging state court judgments. The one year period normally runs from date upon which the conviction became final, *see* § 2244(d)(1), but the time during which a "properly filed" application for state post-conviction or other collateral review is pending is not counted. *See* § 2244(d)(2); Artuz v. Bennett, 531 U.S. 4, 121 S. Ct. 361, 148 L. Ed. 2d 213 (2000).

Accordingly, it is respectfully **RECOMMENDED**:

That Petitioner's notice of voluntary dismissal (Doc. 5) be **GRANTED** and this action dismissed without prejudice.

At Pensacola, Florida, this 1<sup>st</sup> day of August 2006.

*/s/ Elizabeth M. Timothy*

**ELIZABETH M. TIMOTHY**

**UNITED STATES MAGISTRATE JUDGE**

**NOTICE TO THE PARTIES**

**Objections to these proposed findings and recommendations may be filed within ten (10) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control. A copy of objections shall be served upon the magistrate judge and all other parties. Failure to object may limit the scope of appellate review of factual findings. *See* 28 U.S.C. § 636; United States v. Roberts, 858 F.2d 698, 701 (11<sup>th</sup> Cir. 1988).**