

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

WAYNE M. BEATON,  
Petitioner,

vs.

Case No.: 3:09cv302/LAC/EMT

WALTER A. McNEIL,  
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. 6). As grounds for dismissal, Petitioner appears to acknowledge that his claim for relief is moot, as discussed in Medberry v. Crosby, 351 F.3d 1049 (11th Cir. 2003) (*see* Doc. 6 at 3; *see also* Doc. 5).

Rule 41(a)(1)(A)(i) 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 or otherwise responded to the petition, 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 should he determine his claim is not moot and/or after he has fully exhausted his claim in the state courts.

Accordingly, it is respectfully **RECOMMENDED**:

That Petitioner's Notice of Voluntary Dismissal (Doc. 6) be **GRANTED** and this action dismissed without prejudice.

At Pensacola, Florida, this 24<sup>th</sup> day of September 2009.

*/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. 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 (11th Cir. 1988).**