

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

SIDNEY MARTS,
Petitioner,

vs.

Case No. 3:09cv352/MCR/MD

WALTER A. MCNEIL,
Respondent.

REPORT AND RECOMMENDATION

This cause is before the court upon referral from the Clerk. Petitioner commenced this action on August 19, 2009 by filing a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1). He has now filed a motion to voluntarily dismiss the petition without prejudice. (Doc. 7).

Rule 41 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 before the opposing party serves either an answer or a motion for summary judgment. FED.R.CIV.P. Rule 41(a)(1)(A)(i). Since the respondent has not yet been served, petitioner is automatically entitled to take a voluntary dismissal at this time.

Accordingly, it is respectfully RECOMMENDED:

1. That petitioner's motion to voluntarily dismiss (doc. 7) be GRANTED.
2. That the petition for writ of habeas corpus (doc. 1) be DISMISSED WITHOUT PREJUDICE, and the Clerk be directed to close the file.

At Pensacola, Florida this 28th day of September, 2009.

/s/ *Miles Davis*

MILES DAVIS
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Any objections to these proposed findings and recommendations must be filed within ten days after being served a copy hereof. 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 any objections shall be served upon any 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).