

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

JOSUE POLYCARPE,

Petitioner,

v.

Case No. 4:08-cv-439-SPM-AK

WALTER A. McNEIL,

Respondent.

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**ORDER**

Petitioner, a prisoner in the custody of the Florida Department of Corrections, initiated this case by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1). The case has been fully briefed and is pending determination by the Court. The case is presently before the Court on Petitioner's motion to voluntarily dismiss the petition. Doc. 27. However, it is unclear whether Petitioner is aware of the consequences of voluntarily dismissing the petition. Petitioner should note that if this case is dismissed, any subsequently-filed habeas federal habeas petition challenging the same conviction may be barred by the one-year limitations period. See 28 U.S.C. § 2244(d)(1). Although the one-year limitations period is tolled during the pendency of a properly filed application for state post-conviction relief, see Artuz v. Bennett, 531 U.S. 4, 8-9 (2000), the time in which a federal habeas petition is pending does not toll the one-year limitations period. Duncan v. Walker, 533 U.S. 167, 181-82 (2001) (holding that an application for federal habeas corpus review does not toll the one-year limitation period under § 2244(d)(2)).

Accordingly, a ruling on the instant motion, Doc. 27, is **DEFERRED**. Petitioner shall, **no later than March 11, 2010**, file a notice with the Court either stating that he understands that any subsequently-filed federal habeas petition may be time-barred if the instant petition is dismissed, or stating that he wishes to withdraw his motion to voluntarily dismiss this case. The failure to comply with this Order within the allotted time will result in the granting of the motion and the dismissal of this case without further notice.

**DONE AND ORDERED** this 22nd day of February, 2010.

*s/ Stephan P. Mickle*

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Stephan P. Mickle  
Chief United States District Judge