

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

DAVID BROWN,

Plaintiff,

v.

CASE NO. 5:11-cv-364-MP-GRJ

FLORIDA DEPARTMENT
OF CORRECTIONS, and
FLORIDA DEPARTMENT
OF FINANCIAL,

Defendants.

_____ /

ORDER

Pending before the Court is Plaintiff's Motion To Withdraw (Doc. 5), which the Court construes as a motion to voluntarily dismiss the case pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure.

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), a plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. The effect of such a voluntary dismissal by a plaintiff is that the dismissal is without prejudice, unless the plaintiff has previously dismissed any federal or state court action based on or including the same claim. FED. R. CIV. P. 41(a)(1)(B).

In this instance, the Defendants were never served and therefore neither Defendant has filed an answer or a motion for summary judgment. Further, while Plaintiff represented in his Complaint that he had filed an action in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida dealing with the same or similar facts/issues involved in this case a search of the Leon County Clerk of Court's

website reflects that Plaintiff's state court case was transferred to Wakulla County County. The docket for Plaintiff's state court case in Wakulla County reflects the case is still pending.

Accordingly, because the record does not reflect that Plaintiff previously dismissed a federal or state court action based upon or including the same claim Plaintiff's request to dismiss this case without prejudice is due to be granted..

Upon due consideration, it is **ORDERED** that:

- (1) Plaintiff's Motion To Withdraw (Doc. 5), construed as a motion to voluntarily dismiss the case is **GRANTED**.
- (2) Plaintiff's claims against the Defendants are **DISMISSED WITHOUT PREJUDICE**.
- (3) The Clerk is instructed to make the appropriate notation on the docket and close the file.

DONE AND ORDERED this 12th day of December, 2011.

s/ Gary R. Jones

GARY R. JONES
United States Magistrate Judge