

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

OLIVER W. EDWARDS,

Plaintiff,

v.

1:14-cv-352-WSD

DARLENE DREW,

Defendant.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Janet F. King’s Report and Recommendation (“R&R”), which recommended that this action should be dismissed for lack of jurisdiction [2], and Petitioner Oliver W. Edwards’s (“Petitioner”) Motion to Dismiss the Petition pursuant to the R&R [4].

On February 7, 2014, Petitioner filed a petition for writ of habeas corpus challenging his armed-career-criminal enhancement. On February 19, 2014, the Magistrate Judge, *sua sponte*, recommended that the petition should be dismissed for lack of jurisdiction pursuant to Rule 4 of the Rules Governing Section 2254 Cases, which requires a federal court to “dismiss any habeas petition that appears legally insufficient on its face.” Borden v. Allen, 646 F.3d 785, 810 (11th Cir.

2011). On March 2, 2014, Petitioner moved to voluntarily dismiss this action, arguing that while he acknowledged the correctness of the R&R, he is entitled to relief on a different claim under different legal theories, which were not presented in his petition.

Rule 12 of the Rules Governing Section 2253 Cases provides that “The Federal Rules of Civil Procedure, to the extent they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules.” Rule 41 of the Federal Rules of Civil Procedure provides that an action may be dismissed without a court order by filing a notice of dismissal “before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(I). Rule 41 applies to federal habeas corpus proceedings. See Doster v. Jones, 60 F. Supp. 2d 1258 (M.D. Ala. 1999). Petitioner is entitled to a voluntary dismissal because Respondent has not, to date, served an answer or filed a dispositive motion in this matter.


Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Janet F. King’s Report and Recommendation is **REJECTED**.

IT IS FURTHER ORDERED that Petitioner’s Motion, construed as a notice of voluntary dismissal, is **GRANTED** and this action is **DISMISSED**

WITHOUT PREJUDICE.

SO ORDERED this 11th day of July 2014.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE