

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

TERRY CARTER, JR.,)	
)	
Petitioner,)	
)	
v.)	CV 116-094
)	(Formerly CR 107-076)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Petitioner, an inmate at FCI Butner in North Carolina, filed with this Court a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Upon initial review as required by Rule 4 of the Rules Governing Section 2255 Proceedings, the Court recommended Petitioner’s motion be dismissed. (Doc. no. 2.) In lieu of objections, Petitioner filed a motion to voluntarily dismiss his § 2255 motion without prejudice. (Doc. no. 4.)

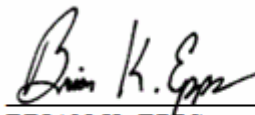
Petitioner may voluntarily dismiss his motion pursuant to Fed. R. Civ. P. 41(a)(1) because Respondent has not filed an answer or motion for summary judgment in this case.¹ This Court and other courts have approved the practice of dismissing § 2255 actions without

¹Under Rule 12 of the Rules Governing Section 2255 Cases, “[t]he Federal Rules of Civil Procedure . . . , to the extent they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.”

prejudice. See, e.g., Cooks v. United States, CV 114-091, doc. no. 10 (S.D. Ga. Oct. 2, 2014); McGee v. United States, CV 111-192, doc. no. 10 (S.D. Ga. Aug. 17, 2012); see also Weeks v. United States, 382 F. App'x 845, 850 (11th Cir. 2010) (noting dismissal of § 2255 motion without prejudice). Therefore, the Court finds it appropriate to dismiss the case pursuant to Petitioner's motion.

However, Petitioner should note that, while a subsequent § 2255 motion will not be barred purely by virtue of the dismissal of this action, any future habeas petition and/or § 2255 motion will be subject to all statutory provisions applicable to such actions including the Antiterrorism and Effective Death Penalty Act of 1996. See 28 U.S.C. §§ 2244 & 2255. Accordingly, the Court **GRANTS** Petitioner's motion to dismiss, (doc. no. 4), **DENIES AS MOOT** Petitioner's motion to appoint counsel (CR107-076, doc. no. 44), **DISMISSES** this case without prejudice, **DIRECTS** the **CLERK** to **TERMINATE** all pending motions and deadlines, and **CLOSES** this case.

SO ORDERED this 31st day of August, 2016, at Augusta, Georgia.



BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA