

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
MAY 01 2018
Clerk, U.S. Courts
District Of Montana
Missoula Division

BRETT LOCKHART,

Petitioner,

vs.

JAMES SALMONSON,

Respondent.

Cause No. CV 18-26-M-DLC-JCL

ORDER

This case comes before the Court on Petitioner Brett Lockhart's application for writ of habeas corpus under 28 U.S.C. § 2254. Lockhart is a state prisoner proceeding pro se.

On January 31, 2018, Lockhart joined a group of prisoners in filing an "en masse" habeas petition. This Court subsequently issued an order to Petitioner directing him to advise the Court if he did wish to proceed in this habeas matter and, if so, requiring Petitioner to complete and file this Court's standard § 2254 habeas form. (Doc. 1.)

Lockhart failed to timely respond to the Court's Order and Magistrate Judge Jeremiah C. Lynch thereafter issued his Order and Findings and Recommendations (Doc. 5) on March 19, 2018. Lockhart objected to Judge Lynch's Order and Findings and Recommendations (Docs. 6; 7). Judge Lynch then issued an

Amended Order and Findings and Recommendations (Doc. 8) on April 18, 2018. Judge Lynch recommended dismissal without prejudice because Lockhart had not filed an individual petition for habeas corpus relief as directed. (Doc. 8 at 3.)

On April 24, 2018, Lockhart filed a Motion to Sever and Withdraw from the En Masse Petition and Supplement Petition for Writ of Habeas Corpus Without Prejudice to Exhaust State Remedies (Doc. 9). Lockhart advised the Court that he wished to be severed from the en masse group and to be allowed to withdraw the pending petition so that he may exhaust his state remedies. (Doc. 9 at 1–2). Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides Lockhart with an avenue for voluntary dismissal. Accordingly,

IT IS ORDERED that Lockhart’s Motion (Doc. 9) is GRANTED. This matter is DISMISSED WITHOUT PREJUDICE pursuant to Fed. R. Civ. P. 41(a)(1)(B). Lockhart may return to this Court if and when he has exhausted his state remedies.

IT IS FURTHER ORDERED that Judge Lynch’s Order and Findings and Recommendations (Doc. 5) and Amended Order and Findings and Recommendations (Doc. 8) are REJECTED AS MOOT.

DATED this 1st day of May 2018.



Dana L. Christensen, Chief Judge
United States District Court