

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JAMES A. COUTTS,)
)
 Petitioner,)
)
 v.)
)
 MICHAEL L. KENNEY,)
)
 Respondent.)

CASE NO. 4:13CV3144

**MEMORANDUM
AND ORDER**

This matter is before the Court on Petitioner James Coutts’s “Motion to Withdraw[] Writ of Habeas Corpus (‘Amended Petition’)” (Filing No. 38). Liberally construed, Coutts has filed a motion to dismiss his Amended Petition for Writ of Habeas Corpus (Filing No. 24) pursuant to Federal Rule of Civil Procedure 41.

Rule 41(a) states that a plaintiff may 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.” Fed. R. Civ. P. 41(a)(1)(A)(i). See *Williams v. Clarke*, 82 F.3d 270, 272-73 (8th Cir. 1996) (holding that Rule 41(a)(1) applies to habeas corpus cases).

Here, Respondent has not served an answer or a motion for summary judgment in response to the Amended Petition for Writ of Habeas Corpus. In addition, Respondent has not opposed Coutts’s motion. Thus, the Court will dismiss Coutts’s Amended Petition for Writ of Habeas Corpus without prejudice. Accordingly,

IT IS ORDERED:

1. Coutts's "Motion to Withdraw[] Writ of Habeas Corpus ('Amended Petition')"
(Filing No. 38) is granted;
2. Coutts's Amended Petition for Writ of Habeas Corpus (Filing No. 24) is
dismissed without prejudice; and
3. The Court will enter a separate Judgment in accordance with this
Memorandum and Order and the Memorandum and Order dated June 18,
2014. (See Filing No. 34 (dismissing the claims raised in Coutts's Petition for
Writ of Habeas Corpus (Filing No. 1) with prejudice).)

DATED this 2nd day of September, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge