

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DESMOND QUICK,

Plaintiff,

v.

9:16-CV-0807
(BKS/DJS)

JOHN CLARKE, et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

DESMOND QUICK
03-B-1945
Plaintiff, pro se
Great Meadow Correctional Facility
Box 51
Comstock, NY 12821

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
Attorney for Defendant
The Capitol
Albany, NY 12224

LOUIS JIM, ESQ.
Ass't Attorney General

BRENDA K. SANNES
United States District Judge

DECISION and ORDER

Plaintiff Desmond Quick commenced this action by filing a pro se complaint for relief pursuant to 42 U.S.C. § 1983 together with an application to proceed in forma pauperis. Dkt. No. 1 ("Compl."); Dkt. No. 7 ("IFP Application"). Plaintiff subsequently filed an amended complaint, which is the operative pleading. Dkt. No. 14 ("Am. Compl."). Plaintiff has now submitted a request that the action be voluntarily dismissed. Dkt. No. 35. Plaintiff's request

for voluntary dismissal states in its entirety:

I would like the above case dismissed[.] I do not want to proceed with it anymore.

Id. The Court construes plaintiff's request as seeking voluntary dismissal of this action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.").

Defendants have responded to the motion stating "that they do not object to Mr. Quick's request that this case be dismissed." Dkt. No. 36.

Rule 41(a) provides in relevant part 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). Although defendants have appeared in this action, they have not answered or moved for summary judgment. Thus, plaintiff's notice of dismissal entitles to him to voluntarily dismiss this action without a court order. *Id.*¹

In light of the foregoing, upon the filing of plaintiff's notice requesting to withdraw this action, the action was dismissed, and an order of the court was not required to implement that dismissal. The dismissal is without prejudice.

WHEREFORE, it is hereby

ORDERED that in accordance with plaintiff's notice (Dkt. No. 35) to voluntarily dismiss this action, the Clerk of the Court shall close this case and reflect that the action is voluntarily dismissed without prejudice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil

¹ Defendants appeared by counsel after acknowledging receipt of the summons and complaint under their correct names. Dkt. Nos. 26-29, 32. Since this action will be dismissed at plaintiff's request, there is no need to correct defendants' names on the docket report. Moreover, at this stage of the litigation, defendants' consent to dismissal is not required. See Fed. R. Civ. P. 41(a)(1)(A)(i).

Procedure; and it is further

ORDERED that, because this case shall be closed, all outstanding motions are

DENIED as moot; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Decision and Order on the parties.

Dated: January 12, 2017
Syracuse, NY

A handwritten signature in cursive script that reads "Brenda K. Sannes". The signature is written in black ink on a white background.

Brenda K. Sannes
U.S. District Judge