

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

DEVIN GRAY,

Petitioner,

v.

9:19-CV-0324  
(GLS/ATB)

TIMOTHY McCARTHY,

Respondent.

---

APPEARANCES:

OF COUNSEL:

DEVIN GRAY  
Petitioner, pro se  
15-A-1014  
Auburn Correctional Facility  
P.O. Box 618  
Auburn, NY 13021

GARY L. SHARPE  
Senior United States District Judge

**DECISION and ORDER**

**I. INTRODUCTION**

Petitioner pro se Devin Gray filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, as well as a supporting memorandum of law and various state court exhibits. Dkt. No. 1, Petition ("Pet."); Dkt. No. 1-1, Memorandum of Law ("Pet. Memo."); Dkt. No. 1-2, Exhibits. He also filed a properly certified application to proceed in forma pauperis (IFP). Dkt. No. 2.

On March 25, 2019, after conducting an initial review, the Court ordered that, within thirty days, petitioner was either to: (1) inform the Court that he wished to pursue only those claims set forth in his pending petition; (2) file a motion to amend his original petition,

presuming the state court rendered a decision on his state court application, adding his unexhausted claims to his petition; or (3) seek voluntary dismissal of the pending petition.

Dkt. No. 3, Decision and Order ("March Order"), at 9.<sup>1</sup>

On April 22, 2019, consistent with the Court's March Order, petitioner indicated his preference on how he wished to proceed; he filed a motion to withdraw. Dkt. No. 4. Specifically, petitioner states he wants to "move for a dismissal of [his] petition without prejudice . . . so [petitioner] may refile [his petition] after [his] state court remedies have been exhausted." *Id.* Petitioner's motion, (*id.*), is granted.

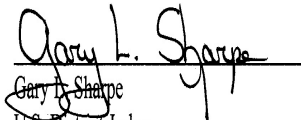
**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that petitioner's IFP application (Dkt. No. 2) is **DENIED** as moot; and it is further

**ORDERED** that petitioner's motion to withdraw (Dkt. No. 4) is **GRANTED** and the petition is **DISMISSED WITHOUT PREJUDICE**; and it is further

**ORDERED** that the Clerk serve copies of this Decision and Order upon petitioner in accordance with the Local Rules of Practice.

April 24, 2019  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge

---

<sup>1</sup> Citations to the petition and the Court's March Order refer to the pagination generated by CM/ECF, the Court's electronic filing system.