

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

ABULAY NIAN,

Petitioner,

: Case No. 2:17-cv-313

- vs -

District Judge James L. Graham
Magistrate Judge Michael R. Merz

WARDEN, North Central
Correctional Complex,

Respondent.

VOLUNTARY DISMISSAL ORDER

In compliance with the mandate of the Sixth Circuit Court of Appeals in *Nian v. Warden, N. Cent. Corr. Inst.*, 994 F.3d 746, 759 (6th Cir. 2021), this Court issued a Conditional Writ of Habeas Corpus requiring the Common Pleas Court of Delaware County, Ohio, to conduct a hearing on Petitioner's motion for a new trial under *Remmer v. United States*, 347 U.S. 227 (1954). That hearing is completed and Petitioner has advised the Court that he is not challenging the constitutionality of that hearing in his state court appeal (ECF No. 26, PageID 1112). He has also withdrawn his request for a stay under *Rhines v. Weber*, 544 U.S. 269 (2005) in this Court.

Given that posture of the case, both parties agree that the proper disposition of this case is dismissal without prejudice under Fed.R.Civ.P. 41 (ECF Nos. 28, 29). Accordingly, the Clerk is ordered to enter judgment dismissing this case without prejudice.

March 9, 2022.

s/ Michael R. Merz
United States Magistrate Judge