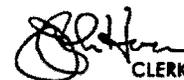


UNITED STATES DISTRICT COURT  
 DISTRICT OF SOUTH DAKOTA  
 SOUTHERN DIVISION

**FILED**

NOV 12 2015

  
 CLERK

DIW BOL KIIR,

Plaintiff,

vs.

OFFICER CHASE VANDERHULE, Police  
 Officer at Sioux Falls Police  
 Department, in his official capacity;  
 MICHAEL MILLER, Attorney at  
 Minnehaha County Public Defenders, in  
 his official capacity;  
 LYNDEE KAMRATH, Attorney at  
 Minnehaha County Public Advocate, in  
 her official capacity,

Defendants.

4:15-CV-04164-LLP

ORDER DISMISSING CASE

Plaintiff, Diw Bol Kiir, is an inmate at the Minnehaha County Jail in Sioux Falls, South Dakota. Plaintiff filed a pro se civil rights lawsuit pursuant to 42 U.S.C. § 1983 and now moves to set aside the complaint until after he is sentenced in state court. Docket 1, 6. The Court construes Kiir's motion as a motion for dismissal under Federal Rule of Civil Procedure 41(a)(1).

"The decision to grant or deny a plaintiff's motion to voluntarily dismiss a lawsuit rests upon the sound discretion of the district court . . ." *Beavers v. Bretherick*, 227 F. App'x 518, 520 (8th Cir. 2007).

Federal Rule of Civil Procedure 41(a)(1) allows a plaintiff to dismiss an action without order of the court by filing a notice of dismissal at any time before the adverse party serves an answer or a motion

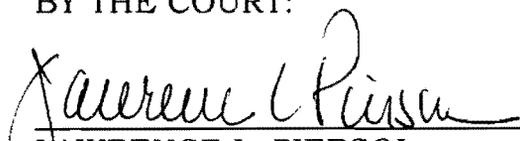
for summary judgment. Rule 41(a)(1) voluntary dismissal is without prejudice unless the plaintiff has previously dismissed an action including the same claim in any other court.

*Williams v. Clarke*, 82 F.3d 270, 272 (8th Cir. 1996). Kiir's complaint has not been served. Voluntary dismissal is appropriate at this time. Accordingly, it is

ORDERED that Kiir's complaint (Docket 1) is dismissed without prejudice.

Dated November 12<sup>th</sup>, 2015.

BY THE COURT:

  
\_\_\_\_\_  
LAWRENCE L. PIERSOL  
UNITED STATES DISTRICT JUDGE