

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JODY C. MANN,

Petitioner,

v.

Case No: 2:15-cv-374-FtM-38MRM

SECRETARY, DOC and FLORIDA
ATTORNEY GENERAL,

Respondents.

_____ /

OPINION AND ORDER¹

This matter comes before the Court on Petitioner's Notice of Voluntary Dismissal ([Doc. 19](#)) filed on February 8, 2016. Petitioner advises the Court that he "dismisses this Petition for Writ of Habeas Corpus" *Id.* at 1. Because Respondent filed a Response to the Petition ([Doc. 14](#)), the Court construes the notice of voluntary dismissal as a motion pursuant to [Fed. R. Civ. P. 41\(a\)](#) (2).²

Rule 41(a) (2), permits the Court to order a dismissal of an action "on terms that the court considers proper." *Id.* Absent a contrary indication, a dismissal under Rule

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²**Error! Main Document Only.**Habeas Corpus Rule 11 permits application of the Federal Rules of Civil Procedure to habeas proceedings "to the extent that they are not inconsistent with any statutory provisions or [the habeas] rules." *Rules Governing Section 2254 Cases in the United States District Courts*, R. 11.

41(a) (2) is without prejudice. *Id.* Respondent has not filed a response opposing Petitioner's motion. See docket. Consequently, the Court deems the motion unopposed. Local R. 3.01(b), M.D. Fla. Further, the Court independently discerns no identifiable prejudice to Respondent as a result of granting a voluntary dismissal of this action.

Accordingly, it is now **ORDERED**:

1. Petitioner's Notice of Voluntary Dismissal ([Doc. 19](#)) construed as a Motion pursuant to [Fed. R. Civ. P. 41\(a\)](#) (2) is **GRANTED** and the Petition ([Doc. 1](#)) is **DISMISSED** without prejudice.³

2. The **Clerk of the Court** shall enter judgment accordingly, terminate any pending motions and close this case.

DONE and **ORDERED** in Fort Myers, Florida this 30th day of January, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies:
Petitioner
All Parties of Record

³This dismissal without prejudice does not excuse Petitioner from the one-year period of limitation for raising a habeas corpus petition in the federal courts. See [28 U.S.C. § 2244\(d\)](#). The one-year period normally runs from date upon which the conviction became final, see § 2244(d)(1), but the time during which a "properly filed" application for state post-conviction or other collateral review is pending is not counted. See [28 U.S.C. § 2244\(d\)\(2\)](#); *Artuz v. Bennett*, 531 U.S. 4 (2000). The time in which a federal habeas petition is pending, however, does not toll the one-year limitation period. See *Duncan v. Walker*, 533 U.S. 167, 181 (2001) (construing 28 U.S.C. § 2244(d) (2)). Therefore, the fact that the instant petition is dismissed without prejudice does not preclude a determination that a subsequently filed § 2254 petition is untimely or otherwise procedurally barred.