

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALEXANDER EDISON,

Petitioner,

v.

Case No: 2:18-cv-661-FtM-38MRM

SECRETARY, DOC and FLORIDA
ATTORNEY GENERAL,

Respondents.

_____/

OPINION AND ORDER¹

Before the Court is Petitioner's Motion to Strike and Dismiss Pending Motion Under [28 U.S.C. § 2254](#) ([Doc. 15](#)) filed February 19, 2019. Petitioner, who is incarcerated in the Florida Department of Corrections, has pending before the Court a *pro se* Amended Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#) ([Doc. 8](#)). Respondent filed a Response to the Amended Petition ([Doc. 11](#)) on February 1, 2019. Petitioner, requests that the Court "strike and dismiss" his pending § 2254 petition. [Doc. 15 at 2](#).

The Federal Rules of Civil Procedure are to be applied to habeas proceedings, to the extent that they are consistent with the habeas statutory provisions and habeas rules. Rules Governing Section 2254 Cases, Rule 11. Prior to an answer or motion for summary

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judgment by the opposing party or upon stipulation, a party may voluntarily dismiss an action without a court order. [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)](#). Otherwise, an action may be dismissed upon the plaintiff's request by court order. [Fed. R. Civ. P. 41\(a\)\(2\)](#). The Court construes the Motion a brought pursuant to [Fed. R. Civ. P. 41\(a\)\(2\)](#). Respondent filed a response to the Motion and advised the Court that it has no objection to the Court granting Petitioner's Motion. [Doc. 17](#).

Accordingly, it is now

ORDERED:

Petitioner's Motion ([Doc. 15](#)) construed as a motion to voluntarily dismiss the petition pursuant to [Fed. R. Civ. P. 41\(a\)\(2\)](#) is **GRANTED** and the Clerk shall enter judgment dismissing the Amended Petition ([Doc. 8](#)) without prejudice,² terminate any pending motions and deadlines, and close this case.

DONE and **ORDERED** in Fort Myers, Florida this 28th day of February 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record

² This 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.