

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROBERT GENE GARCIA,

Plaintiff,

vs.

CIVIL ACTION
No. 05-3472-SAC

LOUIS BRUCE, et al.,

Defendants.

ORDER

Plaintiff proceeds pro se and in forma pauperis on a complaint filed under 42 U.S.C. § 1983. By an order dated July 7, 2006, the court directed plaintiff to show cause why the complaint should not be dismissed as stating no claim for relief.

In response, plaintiff filed a motion for the voluntary dismissal of his complaint. Pursuant to Rule 41 of the Federal Rules of Civil Procedure, plaintiff is entitled to dismiss this action voluntarily, and without order of the court, "by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." Fed.R.Civ.P. 41(a)(1)(i). The court construes plaintiff's motion as a notice of dismissal, and finds this action is voluntarily dismissed by plaintiff without prejudice.

In his notice of voluntary dismissal, plaintiff also seeks an order to show cause why his name should not be changed to Robert Ugene Garcia, and states that any prisoner incarcerated on a sentence imposed on other than his birth name shall be released. The court denies this request without prejudice as mooted by plaintiff's voluntary dismissal of the complaint, as seeking relief

provided in the state courts for legally changing one's name, and/or as an improper to seek federal habeas relief in a § 1983 action.

Plaintiff's offer to pay the outstanding balance of the district court filing fee in this matter through monthly payments of \$12.50 is denied. Payment of the remainder of the filing fee of the \$350.00 district court filing fee in this civil action must proceed through the automatic payments from plaintiff's inmate trust fund account as provided by 28 U.S.C. § 1915(b)(2).

IT IS THEREFORE ORDERED that the complaint is dismissed without prejudice pursuant to plaintiff's notice of voluntary dismissal, Fed.R.Civ.P. 41(a)(1).

IT IS FURTHER ORDERED that plaintiff's motion for a name change is denied without prejudice.

IT IS SO ORDERED.

DATED: This 25th day of July 2006 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge