

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

TREVIS JOEL FREEMAN,

Plaintiff,

v.

CASE NO. 17-3222-SAC

LARRY MARKLE,

Defendant.

ORDER

Plaintiff, Trevis Joel Freeman, is a state pretrial detainee housed at the Montgomery County Department of Corrections in Independence, Kansas. Plaintiff filed this *pro se* § 1983 action against the prosecutor, Larry Markle, alleging he exhibited bias, withheld crucial evidence, made false statements to the court, and violated Plaintiff’s Sixth Amendment right to a speedy trial.

On April 5, 2018, Mr. Freeman submitted a motion asking to dismiss the instant action without prejudice (Doc. 7). The Court must construe liberally the April 5 motion because Mr. Freeman submitted the motion on his own behalf. *See Haines v. Kerner*, 404 U.S. 519, 520–21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). The Court will construe the April 5 motion liberally as a notice of voluntary dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Rule 41(a)(1) provides that “the plaintiff may dismiss an action without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” No response has been filed by the defendant in this action. A voluntary

dismissal pursuant to Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. *See Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The notice closes the file. *See id.*

In his motion, Plaintiff also asks that he have “the full option to reopen [the] case in a proper form at a later time within 1 years time from this date.” (Doc. 7). This portion of Plaintiff’s motion is denied insofar as it conflicts with the Federal Rules of Civil Procedure. Rule 60(b) allows a party to file a motion requesting relief from a final judgment for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Rule 60(c) provides that such motion must be made “within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. Fed. R. Civ. P. 60(c).

IT IS THEREFORE BY THE COURT ORDERED that the motion filed by Plaintiff on April 5, 2018 (Doc. 7), is **granted in part** and is construed as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1).

IT IS FURTHER ORDERED that the voluntary dismissal is effective as of April 5, 2018, the date the liberally construed notice of dismissal was filed in this action.

IT IS FURTHER ORDERED that this action is **dismissed without prejudice**.

IT IS SO ORDERED.

Dated on this 25th day of April, 2018, in Topeka, Kansas.

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