

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

**KASTON HUDGINS,**

**Petitioner,**

**v.**

**CASE NO. 22-3173-JWL-JPO**

**DAN SCHNURR,**

**Respondents.**

**MEMORANDUM AND ORDER**

This matter comes before the Court on Petitioner Kaston Hudgins' request to voluntarily dismiss his pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 12.) Because Petitioner is pro se, the Court liberally construes the motion. *See James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013). The Court construes the filing as a motion for voluntary dismissal of this matter without prejudice.

Although the Rules Governing Section 2254 Cases in the United States District Courts do not address voluntary dismissals, Rule 12 of those rules states that “[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.” Federal Rule of Civil Procedure 41(a)(1) provides that “the [petitioner] 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 answer on the merits or motion for summary judgment has been filed by respondent in this action, and the Court concludes that this matter may be dismissed under Rule 41(a)(1)A). Accordingly, the motion will be granted and this matter will be dismissed without prejudice.

**IT IS THEREFORE ORDERED** that Petitioner's motion to dismiss (Doc. 12) is **granted** and this matter is **dismissed without prejudice**.

**IT IS SO ORDERED.**

DATED: This 4th day of January, 2023, at Kansas City, Kansas.

S/ John W. Lungstrum

JOHN W. LUNGSTRUM  
United States District Judge