

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

DANIEL DELANE COOK,

Petitioner,

v.

Warden EDWARD PHILBIN,

Respondent.

CIVIL ACTION NO.
3:23-cv-00028-TES-CHW

ORDER OF DISMISSAL

Before the Court is Petitioner Daniel Delane Cook’s Motion to Withdraw [Doc. 9] his Petition [Doc. 1] for writ of habeas corpus under 28 U.S.C. § 2254. As grounds for his motion, Petitioner states that he “wishes to withdraw” the instant Petition “to prevent [a frivolous] cause[.]” [Doc. 9, p. 1]. In accordance with *Smith v. Williams*, the Court treats Petitioner’s motion as a “self-executing notice of dismissal under [Federal Rule of Civil Procedure] 41.” 67 F.4th 1139, 1140 (11th Cir. 2023).

Rule 41(a)(1) “entitles a plaintiff to voluntarily ‘dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.’” *Id.* (quoting Fed. R. Civ. P. 41(a)(1)). This notice is “effective immediately upon filing” and deprives the Court of jurisdiction. *Smith*, 67 F.4th at 1140–41 (first quoting *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1277 (11th Cir. 2012) and then quoting *Absolute Activist Value Master Fund Ltd. v.*

Devine, 998 F.3d 1258, 1265 (11th Cir. 2021). Accordingly, the Court **DISMISSES** the instant Petition [Doc. 1] **without prejudice** pursuant to Rule 41(a) and **TERMINATES** Petitioner's Motion to Withdraw [Doc. 9] **as moot**.

SO ORDERED, this 13th day of June, 2023.

S/ Tilman E. Self, III

TILMAN E. SELF, III, JUDGE

UNITED STATES DISTRICT COURT