

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES KARLS,

Petitioner,

v.

CATHERINE FERRY, Warden,  
New Lisbon Correctional Institution,

Respondent.

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ORDER

05-C-0431-C

05-C-0570-C

Petitioner James Karls has filed a motion for voluntary dismissal of his two habeas corpus petitions, which this court consolidated in an order entered October 5, 2005. In his motion, petitioner states that some of his claims are unexhausted and that he would like to exhaust the claims in state court.

Because the state has not yet filed a response to the petition, this court has no basis to deny the motion. See Fed. R. Civ. P. 41(a)(1). However, petitioner should be aware that upon dismissal, he will not get a new one-year limitations period in which to refile a federal habeas action after he exhausts his claims in state court. As noted in the October 5 order, petitioner's own calculations show that at the time he filed the instant petition, there was little time remaining on his federal habeas clock. I presume from petitioner's submissions in this case and the court's discussion of Rhines v. Weber, -- U.S. -- , 125 S. Ct. 1528 (2005), in the October 5 order that petitioner understands the risk he runs by seeking dismissal of this petition. With that caveat, I will grant petitioner's motion.

ORDER

IT IS ORDERED that petitioner James Karls's motion for voluntary dismissal of his consolidated petition for a writ of habeas corpus is GRANTED. The petition is DISMISSED WITHOUT PREJUDICE.

Entered this 25th day of October, 2005.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge