

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Mark Mariano

v.

Case No. 05-cv-25-PB

Warden, NH State Prison

O R D E R

I have already determined that petitioner's unexhausted claims are meritless. Accordingly, the case should not be stayed to allow petitioner to exhaust his unexhausted claim. See Rhines v. Weber, 125 S.Ct. 1528, 1535 (2005). The case shall instead be dismissed without prejudice to permit petitioner to exhaust his unexhausted claim unless, on or before May 27, 2006, petitioner files a motion to dismiss only his unexhausted claim. Petitioner is on notice that he may lose the right to litigate his unexhausted claim in federal court if he files such a motion.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
U.S. District Judge

Date: April 27, 2006

cc: Mark Mariano, pro se
Susan McGinnis, Esq.

