

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRETony L. Ellison

v.

Civil No. 08-cv-18-JL

NH Department of Corrections, et al.ORDER

Judge Muirhead ordered the petitioner (doc. # 9) to notify the court of his intent to exhaust claims 1, 2 and 4-6 during which the case would be stayed, or to proceed on the only exhausted (but possibly time-barred) claim (claim #3), thereby waiving the unexhausted claims. See Rhines v. Weber, 544 U.S. 269, 278-79 (2005); Neverson v. Bissonette, 261 F. 3d 7, 15 n. 3 (1st Cir. 2001). The petitioner gave no complying notice and made no showing of an attempt to exhaust (see doc. # 11), and instead proceeded on claim #3 (see id.). Assuming without deciding that the petition is not time-barred, petitioner's claim #3 has repeatedly been held to lack constitutional merit. See Hearns v. Warden, 2008 DNH 180, Pelletier v. Warden, 2008 DNH 139 (2008). Summary judgment granted in favor of the defendants. Petition denied. The clerk shall close the case.

SO ORDERED.

August 11, 2009



Joseph N. Laplante
United States District Judgecc: Tony L. Ellison , Pro se
Susan P. McGinnis, Esq.