

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Tony L. Ellison

v.

Civil No. 12-cv-36-PB

Richard Gerry, Warden,
New Hampshire State Prison

O R D E R

Tony L. Ellison maintains this action, seeking a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. In the petition originally filed in this matter (doc. nos. 1 and 3), Ellison asserted four claims for relief, three of which this court deemed, in an order (doc. no. 4) issued July 2, 2012 (the "July 2 order"), to be "second or successive," and therefore not actionable in this court under 28 U.S.C. § 2244(b)(1).

In the July 2 order, the court directed Ellison either to forego the successive claims or to seek authorization from the First Circuit to pursue those claims. In response to the July 2 order, Ellison filed an amended petition (doc. no. 6) including only the non-successive claim raised in the original petition (doc. nos. 1 and 3). The amended petition was accompanied by a letter (doc. no. 6, p.6) stating that Ellison had chosen to

forego his successive claims and pursue only his non-successive claim in this action.

The court now construes the letter (doc. no. 6, p. 6) as a motion to amend Ellison's petition, filed pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, and to withdraw the three successive claim. The Clerk's office is therefore directed to redocket the letter as a separate motion to amend the petition.

SO ORDERED.

A handwritten signature in black ink, appearing to be 'L. McCafferty', written over a horizontal line.

Landya McCafferty
United States Magistrate Judge

January 16, 2013

cc: Tony L. Ellison, pro se

LBM:jba