

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

Dwayne Hearns

v.

Civil No. 05-cv-413-SM

Warden, New Hampshire State Prison


O R D E R

Dwayne Hearns has filed a petition for a writ of habeas corpus and supporting documents, pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction and confinement (document no. 1). He asserts that he has exhausted all but one claim and that the unexhausted claim, challenging the legality of consecutive sentencing, currently is pending before the New Hampshire state courts. Given his statute of limitations concerns under the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254, he has filed the instant mixed petition in order to preserve his exhausted claims.

Because Hearns has elected to proceed in state court, I order the federal proceedings stayed and the petition held in abeyance, pending his resolution of state court remedies. Once he has exhausted state remedies, he must request this Court to

lift the stay and preliminarily review his federal petition.

SO ORDERED.



James R. Muirhead
United States Magistrate Judge

Date: December 20, 2005

cc: Dwayne Hearn, *pro se*