

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LARRY NELSON, :
 :
 Petitioner, :
 : PRISONER
 V. : Case No. 3:03cv946(RNC)
 :
 WARDEN DAVID STRANGE, :
 :
 Respondent. :

ORDER

On December 24, 2003, the court dismissed petitioner's due process claim without prejudice for failure to exhaust state remedies. The court stated that petitioner's claim for ineffective assistance of counsel would not be dismissed unless he informed the court, on or before January 20, 2004, that he preferred to have the court dismiss that claim without prejudice to refile after he exhausted his state remedies on the due process claim. Petitioner did not respond.

On March 24, 2004, the court ordered petitioner to file an amended petition containing only the claim for ineffective assistance of counsel. The court notified him that if he failed to file the amended petition on or before April 9, 2004, the court would dismiss the petition and close the case. Again, petitioner has not responded.

Accordingly, the petition is hereby dismissed without prejudice. Petitioner may (1) file a habeas petition containing both

the due process and ineffective assistance claims after he exhausts his state court remedies with regard to the due process claim, or (2) file a habeas petition containing only the claim for ineffective assistance before exhausting his state court remedies on the due process claim. Petitioner is reminded that if he files a petition containing only the claim for ineffective assistance of counsel, any petition that he later brings on the due process claim may be dismissed as a "second or successive petition." The Clerk may close the file.

So ordered.

Dated at Hartford, Connecticut this 21st day of May 2004.

Robert N. Chatigny
United States District Judge