

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

PERCY LEVAR WALTON,)	
)	Civil Action 7:03CV00347
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
GENE JOHNSON, Director)	
Virginia Department of Corrections,)	By: Samuel G. Wilson
)	United States District Judge
Respondent.)	

Yesterday, this court reconsidered its earlier order dismissing Percy Levar Walton’s habeas petition and denied his motion to alter or amend the court’s judgment. The court denied on alternative grounds Walton’s motion for reconsideration. The court concluded that Walton’s claim that he is not competent to select the method of his execution is successive. Alternatively, the court rejected the claim on its merits. Yesterday, the Supreme Court of the United States decided Nelson v. Campbell, No. 03-6821, 2004 U.S. LEXIS 3680 (May 24, 2004), which held that a suit pursuant to 42 U.S.C. § 1983 only “seeking to enjoin a particular means of effectuating a sentence of death” is not subject to 28 U.S.C. § 2244(b)’s gate-keeping requirements because the state could have proceeded with the execution “by simply altering its method of execution.” This court has revisited its decision sua sponte in light of Nelson and concluded that an alteration or amendment of its judgment remains unwarranted.

ENTER: This May 25th, 2004.

United States District Judge