

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

KENNETH WILLIS GIBBS-EL,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 1:13-CV-257 RM
)	
SUPERINTENDENT)	
)	
Respondent.)	

OPINION AND ORDER

Kenneth Willis Gibbs-El, a *pro se* prisoner, filed this habeas corpus petition challenging a prison disciplinary hearing that the Disciplinary Hearing Body (DHB) at the Miami Correctional Facility conducted on July 2, 2013, under cause number MCF 13-06-189. The Respondent filed a motion to dismiss, arguing that the case was moot because the finding of guilt had been vacated, the sanctions restored, and the case remanded for a re-hearing.

Mr. Gibbs-El argues that the respondent hasn't demonstrated that the finding of guilt was vacated and the sanctions restored. Mr. Gibbs-El hasn't submitted anything demonstrating that they were not. The respondent filed a letter signed by counsel for the Indiana Department of Correction stating that the sanctions have been vacated and the case remanded for rehearing. Absent any contradictory evidence, that letter is sufficient evidence to demonstrate that this case is moot.

Mr. Gibbs-El argues that the motion to dismiss is untimely and he filed a motion asking for default because the respondent didn't respond by the deadline. The original

deadline for a response was November 26, 2013. The respondent sought and was granted an enlargement of time before that deadline expired. The new deadline was January 30, 2014. The motion to dismiss was filed on that day. The motion is timely and there is no basis for default. Moreover, it is unclear what benefit Mr. Gibbs-El believes would be achieved if the motion to dismiss were denied and his habeas corpus petition were granted by default. The Indiana Department of Correction already has vacated the proceeding and restored his time. He has already won and there is no case left for this court to decide.

For the foregoing reasons, the motion for default (DE 13) is DENIED; the motion to dismiss (DE 11) is GRANTED, and this case is DISMISSED.

SO ORDERED.

ENTERED: February 18, 2014

 /s/ Robert L. Miller, Jr.
Judge
United State District Court