

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

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|-----------------|---|------------------------------|
| KEITH T. SMITH, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | CAUSE NO. 2:17-CV-328-RL-JEM |
| |) | |
| WARDEN, |) | |
| |) | |
| Respondent. |) | |

OPINION AND ORDER

This matter is before the Court on the: (1) 28 U.S.C. § 2254 Habeas Corpus Petition by a State Prisoner Challenging a Prison Disciplinary Proceeding, filed by Keith T. Smith, a prisoner without a lawyer, on August 4, 2017; and (2) Motion to Dismiss, filed by the Warden on October 25, 2017 (ECF 4). For the reasons set forth below, the motion to dismiss (ECF 4) is **GRANTED** and the Clerk is **DIRECTED** to close this case.

BACKGROUND

Keith T. Smith filed this habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his loss of 30 days earned credit time. ECF 1. On May 4, 2017, in case number ISP 17-05-0006, a Disciplinary Hearing Officer ("DHO") at the Indiana State Prison found Smith guilty of Attempted Disorderly Conduct in violation of Indiana Department of Correction policies B-240/236. *Id.*

DISCUSSION

The Warden now moves to dismiss, asserting that after Smith filed the petition, the finding of guilt and sanctions were vacated. ECF 4, 4-2. Smith did not file a response and the time for doing so has passed. See N.D. Ind. L. Cr. R. 47-2. Regardless, the court cannot overturn the disciplinary proceeding and restore his time because the Indiana Department of Correction has already vacated the proceeding and restored his time. That is to say, Smith has already won and there is no case left for this court to decide. Accordingly, this case must be dismissed. See *Hadley v. Holmes*, 341 F.3d 661, 664 (7th Cir. 2003) (prisoner can challenge prison disciplinary determination in habeas proceeding only when it resulted in a sanction that lengthened the duration of his confinement).

CONCLUSION

For the reasons set forth above, the motion to dismiss (ECF 4) is **GRANTED** and the Clerk is **DIRECTED** to close this case.

DATED: January 16, 2018

RUDY LOZANO, Judge
United States District Court