

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

CHAD McKINNEY,)	
)	
Petitioner,)	
)	
vs.)	CAUSE NO. 3:13-CV-677 PS
)	
SUPERINTENDENT,)	
)	
Respondent.)	

OPINION AND ORDER

This matter is before the court on the habeas corpus petition of Plaintiff Chad McKinney, a pro se prisoner, challenging his prison disciplinary proceeding at the Indiana State Prison on May 31, 2011, where he was found guilty of Possessing Unauthorized Property in violation of B-215 (DE 1). On September 5, 2013, the respondent filed a motion to dismiss arguing that these claims are unexhausted because McKinney did not appeal to the Final Reviewing Authority and has provided the administrative record proving that McKinney did not appeal beyond the Superintendent of the Indiana State Prison. I waited for a response from McKinney, but he did not respond. So on November 9, 2013, I granted the motion to dismiss because in Indiana, “to exhaust a claim [in a prison disciplinary case], and thus preserve it for collateral review under § 2254, a prisoner must present that legal theory to the . . . Final Reviewing Authority . . .” *Moffat v. Broyles*, 288 F.3d 978, 982 (7th Cir. 2002). However, on November 20, 2013, McKinney asked to reopen the case so that he could respond. In the interests of justice, I granted him until January 16, 2014, to do so. I also cautioned him that if he did not respond by that deadline, that I would dismiss this case without further notice. That deadline has now passed without a response. Therefore, because the undisputed record shows that McKinney did not file an administrative

appeal to the Final Reviewing Authority, all of his grounds are procedurally defaulted. *See Lewis v. Sternes*, 390 F.3d 1019, 1025-1026 (7th Cir. 2004).

For the foregoing reasons, the motion to dismiss (DE 4) is **GRANTED**, the habeas corpus petition (DE 1) is **DENIED**, and this case is **DISMISSED**.

SO ORDERED.

ENTERED: March 13, 2014

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT