

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

LARRY CRAIG,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 3:18-CV-30-RLM-MGG
)	
WARDEN,)	
)	
Respondent.)	

OPINION AND ORDER

Larry Craig, a prisoner without a lawyer, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his prison disciplinary case WVE 16-12-42. The Warden has moved to dismiss Mr. Craig’s petition. Mr. Craig filed a response to the motion, and the motion is fully briefed.

The history of case WVE 16-12-42 is as follows. In April 2017, Mr. Craig filed a petition challenging his prison disciplinary case in WVE 16-12-42 in the U.S. District Court for the Southern District of Indiana. *See Craig v. Warden*, 2:17-CV-178-JMS-MJD (S.D. Ind. filed April 19, 2017). He alleged a number of due process violations stemming from his December 2016 hearing in which the hearing officer at the Wabash Valley Correctional Facility sanctioned him after finding him guilty of assault on staff in violation of Indiana Department of Correction (IDOC) policy A-117. In August 2017, the Department of Correction vacated Mr. Craig’s guilty finding and sanctions and remanded the case for a new hearing. The federal court then dismissed the case. A hearing officer at the

Westville Correctional Facility reheard the case and found Mr. Craig guilty of assault on staff. He was sanctioned with the loss of 60 days earned credit time and a one-step demotion in credit class. Mr. Craig then filed this petition challenging the rehearing.

The Warden now moves to dismiss the petition because Mr. Craig didn't exhaust his administrative remedies before filing his petition with this court. The Warden says Mr. Craig raised nine issues in his petition but didn't raise any of them in either his first-level appeal with the facility head or second-level appeal with the final reviewing authority. Because of this failure to exhaust, the Warden contends Mr. Craig's claims are procedurally barred from review by this court.

The Warden is mistaken. The Warden is looking at claims Mr. Craig raised in his first petition, not those raised in this one. Mr. Craig raised all nine issues presented in this petition in his administrative appeals. ECF 1-1 at 2-6. Because Mr. Craig properly litigated the issues he raised in his petition in his first-level and second-level appeals in the instant case, he isn't procedurally barred from presenting those claims to this court.

For these reasons, the Warden's motion to dismiss (ECF 11) is DENIED. The Warden is ORDERED to file a response to the petition with the entire administrative record by **March 22, 2019**.

SO ORDERED on February 6, 2019.

 /s/ Robert L. Miller, Jr.
JUDGE
UNITED STATES DISTRICT COURT