

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

| | | |
|-------------------------|---|---------------------------|
| RAYMOND MCGRAW, |) | |
| |) | |
| Petitioner, |) | |
| vs. |) | No. 1:13-cv-01757-TWP-DKL |
| |) | |
| SUPERINTENDENT ZATECKY, |) | |
| |) | |
| Respondent. |) | |

Entry and Order Dismissing Action

I.

Raymond McGraw challenges a prison disciplinary proceeding conducted on July 12, 2013. Claiming that the challenged proceeding is constitutionally infirm, McGraw has filed this action for a writ of habeas corpus. The action is before the court for its preliminary review pursuant to Rule 4 of the *Rules Governing Section 2254 Proceedings in the United States District Court*.

McGraw has been down this path before—quite recently. Specifically, he challenged the same disciplinary proceeding, No. ISR 13-06-0070, in *McGraw v. Zatecky*, No. 1:13-cv-01386-TWP-TAB (S.D.Ind. Sept. 9, 2013)(*McGraw I*). This is known from consideration of the docket in that case. *In re Salem*, 465 F.3d 767 (7th Cir. 2006)(citing cases).

McGraw I was dismissed because McGraw could not satisfy the “in custody” requirement of the federal habeas statute relative to the challenged proceeding. The prior adjudication is conclusive on that point. *Perry v. Sheahan*, 222 F.3d 309, 318 (7th Cir. 2000)(“A

dismissal for lack of jurisdiction precludes relitigation of the issue actually decided, namely the jurisdictional issue.”)(citing *Magnus Electronics, Inc. v. La Republica Argentina*, 830 F.2d 1396, 1400 (7th Cir. 1987)). This means that the present action, for which no authorization from the Court of Appeals has been supplied, must be dismissed for lack of jurisdiction as an unauthorized second or successive habeas application. *Harris v. Cotton*, 296 F.3d 578, 579 (7th Cir. 2002) (section 2244(b) of 28 U.S.C. applies to § 2254 petitions challenging sanctions imposed in prison disciplinary proceedings); *see also Burton v. Stewart*, 549 U.S. 147, 153 (2007) (stating that the district court was without jurisdiction to entertain the habeas petition because the petitioner failed to receive the required authorization from the Court of Appeals and had “twice brought claims contesting the same custody imposed by the same judgment of the state court.”); *United States v. Lloyd*, 398 F.3d 978, 979 (7th Cir. 2005).

Based on the foregoing, the action must be **dismissed for lack of jurisdiction**.

II.


Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 11/12/2013

Distribution:

RAYMOND MCGRAW
883037
PENDLETON CORRECTIONAL FACILITY
4490 West Reformatory Road
Pendleton, IN 46064-9001


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana