

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

MICHAEL FRENCH,	)	
	)	
Petitioner,	)	
vs.	)	Case No. 1:16-cv-0275-TWP-TAB
	)	
SUPERINTENDENT, New Castle	)	
Correctional Facility,	)	
	)	
Respondent.	)	

**Entry Again Directing Further Proceedings**

Petitioner Michael French is an Indiana inmate who seeks a writ of habeas corpus. His claim is that the Indiana Department of Correction did not properly calculate his credit time. Specifically, French contends that he was deprived of all of his educational credit time when his parole was revoked and he was returned to prison. Respondent filed a Motion to Dismiss, asserting that French failed to exhaust all available remedies in the Indiana State courts. In its Entry of June 20, 2016 [Dkt. 12], the Court reviewed the Respondent’s argument and concluded that it was “appropriate that the respondent *specify precisely what state court remedy French still has available*” (emphasis in original).

The Respondent’s filing of July 8, 2016 [ Dkt. 14] fails to adequately address the Court’s concerns. The four arguments which are readily discernible from that filing are that (1) the petitioner has failed to exhaust available remedies in the Indiana state courts, (2) the petitioner committed procedural default by not appeal a decision of the Fayette Circuit Court, (3) the petitioner’s habeas claim is not cognizable under 28 U.S.C. § 2254, and (4) the petitioner’s claim, even if cognizable, lacks merit. The Court finds nothing problematic in the last three arguments, but combining the first and the second arguments perpetuate the concerns expressed in the Entry

of June 20, 2016. The reason is self-evident: if the petitioner has a meaningful remedy remaining in the state courts, a dismissal without prejudice may be proper, whereas if the petitioner has committed unexcused procedural default a dismissal with prejudice may be proper.

The Court must make the correct decision and the Respondent is obligated to make consistent and sensible arguments. Accordingly, Respondent has until **August 1, 2016** to respond and Petitioner may have until **August 15, 2016** within which to reply.

SO ORDERED.

Date: 07/13/16



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TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

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