



Respondent contends that this is sufficient for Washington to avoid procedural default on those claims. [*Id.*]

In support of its conclusion that Washington procedurally defaulted on the claims at issue, the Court's Entry noted that the petitioner "must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." [Dkt. 21 at 15 (quoting *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)).] The Court also recognized that "[a] habeas petitioner who has exhausted his state court remedies without properly asserting his federal claim at each level of state court review has procedurally defaulted that claim." [Dkt. 21 at 15 (quoting *Malone v. Walls*, 538 F.3d 744, 753 (7th Cir. 2008)).] However, the Court erroneously interpreted the phrase "each level of state court review" to encompass both direct appellate relief and post-conviction relief. Instead, as the Respondent points out, the requirement is actually that the petitioner assert his claim through one complete round of state-court review, "either on direct appeal of his conviction or in post-conviction proceedings." [Dkt. 24 at 2 (quoting *Malone*, 538 F.3d at 753 (emphases added)).]

The Court has conducted research in addition to the authority cited by the Respondent and notes that "the petitioner must comply with state rules to avoid procedurally defaulting his claims." *Mahaffey v. Schomig*, 294 F.3d 907, 915 (7th Cir. 2002). In Indiana, "issues already adjudicated in the appellate process are unavailable to a petitioner for post-conviction relief. An issue that is raised on direct appeal and is determined adverse to appellant's position is *res judicata* in post-conviction proceedings." *Hogan v. McBride*, 74 F.3d 144, 146 (7th Cir. 1996) (quoting *Lowery v. State*, 640 N.E.2d 1031, 1037 (Ind. 1994)). Based on this authority, Washington could not have raised the claims at issue in seeking post-conviction relief because they were barred by *res judicata* since they had been adversely decided against him on direct appeal.

Accordingly, the Court agrees with the Respondent that it was error for the Court to find that Washington had procedurally defaulted on the two issues he raised in state court on direct appeal but not on collateral review.

For these reasons, the Court **GRANTS** the Respondent's Motion to Amend/Correct the Court's Entry. [Dkt. 23.] The Court **STRIKES** its previous Entry discussing Washington's Petition for Writ of Habeas Corpus, [dkt. 21], as well as the corresponding Judgment, [dkt. 22]. The Court will issue an amended entry and judgment addressing the claims at issue on the merits. The Court directs the Clerk to **REOPEN** this case.

10/03/2013



Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

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