

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

KENNETH SMITH,

Petitioner,

-vs-

FRANCISCO PINEDA, Warden,

Respondent.

:

Case No. 1:12-cv-196

:

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

ORDER FOR ANSWER

Judge Rose has now adopted the Magistrate's recommendation to determine that the Petition herein is not a second or successive petition on which Smith needs approval of the Circuit Court before proceeding (Doc. No. 20).

Accordingly, upon preliminary consideration pursuant to Rule 4 of the Rules Governing §2254 Cases, the Court finds that it does not plainly appear from the face of the Petition and any exhibits attached thereto that the Petitioner is not entitled to relief in this Court. Accordingly, it is hereby ORDERED that Respondent shall, not later than January 7, 2013, file an answer conforming to the requirements of Rule 5 of the Rules Governing § 2254 Cases. Specifically, said answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, any claim in the Petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.

Before filing the answer, the Respondent shall file those portions of the state court record needed to adjudicate this case, accompanied by an index of the documents in the record. When the record is filed electronically, the Court's CM/ECF filing system will affix a unique PageID number to each page of the record, displayed in the upper right-hand corner of the page. All papers filed in the case thereafter, by either party, including the answer and the exhibit index, shall include record references to the PageID number. Prior to filing the state court record, the Warden's counsel shall ensure that any borders on parts of the record (typically, court reporter transcripts) do not obscure the PageID number when the page is filed.

Petitioner may, not later than twenty-one days after the answer is filed, file and serve a reply to the answer.

The Clerk is ordered to serve the Petition on Respondent and the Attorney General of Ohio, c/o Assistant Attorney General Charles L. Wille, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215.

December 5, 2012.

s/ *Michael R. Merz*
United States Magistrate Judge