

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PATRICK KELLY,

Petitioner,

**CASE NO. 2:18-CV-19
JUDGE GEORGE C. SMITH
Magistrate Judge Michael R. Merz**

v.

WARDEN, ROSS CORECTIONAL, INST.,

Respondent.

OPINION AND ORDER

On September 17, 2018, the Magistrate Judge issued a Report and Recommendation (“R&R”), (ECF No. 8), recommending that Respondent’s Motion to Dismiss on exhaustion grounds, (ECF No. 5), be denied and that this Court order Respondent to file an Answer to the petition. In light of Respondent’s Objections, and Petitioner’s Response to the same, the Court recommitted the matter to the Magistrate Judge for further analysis on October 22, 2018. (ECF No. 11)

On November 2, 2018, the Magistrate Judge issued a Supplemental Report and Recommendation (“Supplemental R&R”), (ECF No. 12), recommending again that Respondent’s Motion to Dismiss, (ECF No. 5), be denied. Although the parties were advised of the right to object to the Supplemental R&R, and of the consequences of failing to do so, no objections have been filed. The Supplemental R&R, (ECF No. 12), is therefore, **ADOPTED** and **AFFIRMED**. Respondent’s Motion to Dismiss, (ECF No. 5), is **DENIED**. Further, and in accordance with the Magistrate Judge’s initial recommendations, the Court hereby **ORDERS** Respondent to file an Answer to the petition that conforms to the requirements of Rule 5 of the

Rules Governing §2254 Cases in the United States District Courts within **SIXTY (60) DAYS** of the date that this Order is filed.

Before filing an Answer to the petition, Respondent shall file those portions of the state court record needed to adjudicate any defenses made in the response. 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 each party shall include record references to the PageID number. Prior to filing the state court record, Respondent's counsel shall ensure that any borders on parts of the record (typically court reporter transcripts) do not obscure the PageID number when filed. The record should be "indexed by insertion of "bookmarks" in the .pdf version of the state court record uploaded to the Court's CM/ECF system, which displays each exhibit and the name of that exhibit in the record.

A complete copy of the Answer and state court record with PageID numbers must be served on petitioner at the time of filing.

Petitioner will have **TWENTY-ONE (21) DAYS** after Respondent files an Answer to the petition to file a Reply.

IT IS SO ORDERED.

s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT