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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW MACKEY,

No. C 07-4189 SI

Petitioner,

ORDER TO SHOW CAUSE

v.

THOMAS G. HOFFMAN, et al.,

Respondents.

Petitioner Andrew Mackey has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

The Court finds that petitioner’s claim of ineffective assistance of counsel is cognizable in a federal habeas action. The clerk shall serve by certified mail a copy of this order, the petition and all attachments thereto upon respondents and respondents’ attorney, the Attorney General of the State of California. The clerk shall also serve a copy of this order on petitioner and petitioner’s counsel at the

1 mailing address provided.

2 Respondents must file and serve upon petitioner, on or before **November 19, 2007**, an answer
3 conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why
4 a writ of habeas corpus should not be issued. Respondents must file with the answer a copy of all
5 portions of the transcript that have been previously transcribed and that are relevant to a determination
6 of the issues presented by the petition. If petitioner wishes to respond to the answer, he must do so by
7 filing a traverse with the Court and serving it on respondents on or before **December 17, 2007**.

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9 **IT IS SO ORDERED.**

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11 Dated: August 20, 2007



12 SUSAN ILLSTON
13 United States District Judge

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United States District Court
For the Northern District of California