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

STEVEN ROBERT NARY,

No. C 11-02795 CRB

Plaintiff,

**ORDER TO SHOW CAUSE**

v.

JAMES D HARTLEY,

Defendant.

Petitioner, who is in the custody of the California Department of Corrections, has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. section 2254. Petitioner was convicted of second degree murder and sentenced to 16 years to Life.

This Court may entertain a petition for a 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); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court 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. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir.

1 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

2 The Court has reviewed the petition and finds good cause to proceed. Accordingly,

3 1. The Clerk of the Court shall serve by certified mail a copy of this Order  
4 and the petition and all attachments thereto upon the Respondents and  
5 the Respondents' counsel, the Attorney General of the State of  
6 California. The Clerk shall also serve a copy of this Order on the  
7 Petitioner's counsel.

8 2. Respondents shall file with this Court and serve upon the Petitioner,  
9 within sixty (60) days of the issuance of this Order, an answer  
10 conforming in all respects to Rule 5 of the Rules Governing Section  
11 2254 Cases, showing cause why a writ of habeas corpus should not be  
12 issued. Respondent shall file with the answer a copy of all portions of  
13 the state trial and appellate record that have been transcribed previously  
14 and that are relevant to a determination of the issues presented by the  
15 petition.

16 3. If the Petitioner wishes to respond to the answer, he shall do so by filing  
17 a traverse with the court and serving it upon the Respondents within  
18 thirty (30) days of his receipt of the answer.

19 **IT IS SO ORDERED.**

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21 Dated: June 16, 2011



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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE