

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**JEFFREY HAVARD**

**PETITIONER**

**VS.**

**CIVIL ACTION NO. 5:08CV275KS**

**CHRISTOPHER EPPS, Commissioner,  
Mississippi Department of Corrections  
and JIM HOOD, Attorney General, State  
of Mississippi**

**RESPONDENTS**

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**ORDER**

This matter came before the Court on Petitioner's Motion to Stay and Abate Pending State Court Successive Petition and his Motion for Leave to Amend Petition for Writ of Habeas Corpus. Both motions relate to claims that were not heard in state court because they are based on newly discovered evidence. Respondents have no objection to the entry of a stay and abeyance order; however, they assert that the claims may be time barred, pursuant to *Mayle v. Felix*, 545 U.S. 644 (2005), which addressed the issue of the relation back of claims in an amended petition.

The Court will, therefore, grant the motion to stay and abate, pending the resolution of Havard's state court request to file a successive post-conviction petition. An amendment of the petition may be unnecessary if Havard obtains relief in state court. In any event, because of the uncertainty of determining how long it will take for the state court claim to be resolved, the Court will deny the Motion for Leave to Amend without prejudice to Havard's right to re-urge this relief at a later date.

IT IS, THEREFORE, ORDERED that Havard's Motion to Stay and Abate Pending State Court Successive Petition [49] is hereby **granted**. The Clerk of the Court is directed to remove this

case from the Court's active docket. Petitioner should notify the Court within thirty days of a final adjudication of his request to file a successive petition.

IT IS FURTHER ORDERED that Havard's Motion for Leave to Amend Petition for Writ of Habeas Corpus [50] is hereby **denied** without prejudice to Havard's right to re-urge this motion at a later date.

IT IS SO ORDERED, this the 13th day of July, 2011.

*s/Keith Starrett*  
UNITED STATES DISTRICT JUDGE