

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JEFFREY HAVARD

PETITIONER

V.

CIVIL ACTION NO.: 5:08cv275-KS

CHRISTOPHER EPPS, et al

RESPONDENTS

**MOTION TO STAY AND ABATE PROCEEDINGS
PENDING STATE COURT SUCCESSIVE PETITION**

Petitioner, Jeffrey Havard, a death-sentenced inmate, hereby moves this Court to stay or abate its proceedings on this Federal Petition for Habeas Corpus relief, pending the outcome of a successive State post-conviction petition filed this day in state court arising from newly-discovered evidence demonstrating that the cause and manner of death of Chloe Britt was not Shaken Baby Syndrome, as was testified to at Havard's trial.

These grounds for relief have not previously been raised in Mississippi's state courts, because the factual grounds for the claims were not discovered until recently. An order staying proceedings on this Petition pending resolution of the state court proceedings therefore fits within the United States Supreme Court's teachings in *Rhines v. Weber*, 125 S. Ct. 1528 (2005) and is counseled by *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011).

In support of this Motion, Petitioner represents the following to the Court:

1. During the pendency of this Petition, through investigation by counsel, Petitioner has uncovered newly-discovered evidence of advances in the scientific and medical fields since Havard's trial. Such evidence demonstrates that the testimony presented at trial concerning Shaken Baby Syndrome is ill-founded, and no longer supported by the scientific and medical

communities. The State's only tendered expert on cause of death has executed an affidavit changing his opinion in this cause based on "recent advances in the field of Biomechanics."

2. In support of the newly-discovered evidence, Petitioner has obtained affidavits and declarations from Dr. Steven Hayne, Dr. Michael Baden, Dr. Janice Ophoven, Dr. George Nichols, and Dr. Chris Van Ee.

3. This newly-discovered evidence demonstrates that Petitioner is innocent of capital murder or, at the very least, creates grave doubts concerning Petitioner's guilt.

4. Counsel for Havard have filed this day a Motion for Relief From Judgment or For Leave to File Successive Petition for Post-Conviction Relief in the Mississippi Supreme Court. A true and correct copy of that pleading is attached as Exhibit "A"¹ to this Motion.

5. In *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398, 1400 (2011), the United States Supreme Court held that "review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits" and "evidence introduced in federal court has no bearing on § 2254(d)(1) review."

6. In *Rhines v. Weber*, 544 U.S. 269, 275-76 (2005), the United States Supreme Court held that it is in the discretion of federal district courts, upon a showing of good cause, to stay petitions and hold the proceedings in abeyance to allow petitioners to present unexhausted claims to state courts.

7. In this case, Petitioner Havard has shown good cause for his failure to exhaust claims based on newly-discovered evidence because the science has recently and drastically changed, and new opinions from the medical community have surfaced. Further, Dr. Steven

¹ In an effort to avoid "bulking up" the record, Petitioner has not filed the exhibits with his motion with this Court; *however*, if the Court desires the exhibits they will be made available.

Hayne, the sole trial expert on the issue of Shaken Baby Syndrome, has only recently altered his trial opinions.

8. Furthermore, Petitioner's claims are potentially meritorious. Petitioner should be afforded the opportunity to present the claims and factual basis in state court.

9. Finally, Petitioner Havard has not engaged in dilatory tactics. He has raised this claim promptly after the discovery of this new advancement in the scientific and medical fields and the changes in Dr. Hayne's trial opinions.

10. For these reasons, this Court should stay proceedings in this case pending the Mississippi Supreme Court's disposition of the successive petition based on newly-discovered evidence.

WHEREFORE, PREMISES CONSIDERED, Petitioner requests that this Court enter its order staying and abating proceedings on this Petition until thirty (30) days after the Mississippi Supreme Court fully and finally adjudicates Petitioner Havard's Motion for Relief From Judgment or For Leave to File Successive Petition for Post-Conviction Relief.

Respectfully submitted, this the 25th day of November, 2013.

JEFFREY HAVARD, PETITIONER

s/ Mark D. Jicka
BY: MARK D. JICKA

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2013, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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s/ Mark D. Jicka

MARK D. JICKA