

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**MONTRELL DASHONE VENTRY
ADC #141556**

PETITIONER

VS.

NO. 5:10CV00233

**RAY HOBBS, Director
Arkansas Department of Correction**

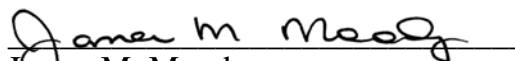
RESPONDENT

ORDER

Petitioner, through appointed counsel seeks permission to file an amended 28 U.S.C. § 2254 petition containing his unexhausted 8th Amendment claim and subsequently seek a stay as set forth in *Rhines v. Weber*, 544 U.S. 269 (2005). The Court finds that good cause is shown for the Petitioner's failure to exhaust his 8th Amendment claim and Petitioner's unexhausted claim is not plainly meritless.¹ Petitioner's motion is GRANTED. Petitioner will have thirty (30) days from the entry of this Order to file his amended § 2254 petition and to seek a stay.

The Court will decline to adopt the Proposed Findings and Recommendations addressing Petitioner's current § 2254 claims

IT IS SO ORDERED this 1st day of March, 2013.


James M. Moody
United States District Judge

¹Courts have disagreed as to whether *Miller v. Alabama*, 132 S. Ct. 2455 (2012) applies retroactively. See, *Craig v. Cain*, 2013 WL 69128 (5th Cir. Jan. 4, 2013) (not retroactive); *People v. Carp*, 2012 WL 5846553 (Mich.App. Nov. 15, 2012) (not retroactive); *Geter v. State*, 2012 WL 4448860 (Fla.App. Sept. 27, 2012) (not retroactive); *State v. Simmons*, 99 So.3d 28 (La.2012) (allowing for resentencing on collateral review in light of Miller); *People v. Morfin*, 2012 WL 6028634 (Ill.App. Nov. 30, 2012) (Miller retroactive).

