

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

RONALD WILLIAMS,	:	
Petitioner,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 11-4319
SUPERINTENDENT, SCI GREENE, et al.,	:	
Respondents.	:	

**EXPLANATION AND ORDER**

On June 15, 2012, a Report and Recommendation was issued recommending a denial of Ronald Williams’ petition for habeas corpus relief under 28 U.S.C. § 2254. On June 28, 2012, Petitioner Williams submitted objections to the Report and Recommendation (Dkt. No. 15) (hereinafter “Objections”).

After a thorough and independent review of the record, I adopt the Magistrate Judge’s conclusions, with the exception of the discussion of the procedurally defaulted fair trial claim. As Williams clarified in the Objections, he did not intend to raise a separate fair trial claim. *See* Objections, p. 6-7. Rather, he argued that the ineffective assistance of his trial counsel violated his Sixth Amendment right to the assistance of counsel and resulted in an unfair trial. In other words, the fair trial claim was bound up with his ineffective assistance claim, and should not have been separated out. Accordingly, none of Williams’ claims is procedurally defaulted.

As for the Sixth Amendment ineffective assistance of counsel claim, characterized in the Report and Recommendation as separate from a fair trial claim, Williams argues that

Pennsylvania law, in contravention of federal law, specifically bars state courts from aggregating ineffective assistance claims and examining the cumulative effect of a lawyer's deficient performance. As a result, Williams argues, the Superior Court did not actually apply the correct standard, as articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), and thus its decision on the ineffective assistance claim should be entitled to no deference from federal courts. The Magistrate Judge did not address any cumulative effect of trial errors.

Williams accurately notes that Pennsylvania law bars consideration of ineffectiveness claims in the aggregate. As a result, the Superior Court did not consider the cumulative effect of Williams' counsel's acts and omissions. The Pennsylvania Supreme Court has repeatedly held that "no number of failed [ineffectiveness] claims may collectively warrant relief if they fail to do so individually." *Commonwealth v. Johnson*, 966 A.2d 523, 532 (Pa. 2009), quoting *Commonwealth v. Washington*, 927 A.2d 586, 617 (Pa. 2007); *Commonwealth v. Rollins*, 738 A.2d 435, 452 (Pa. 1999); *Commonwealth v. (Craig) Williams*, 615 A.2d 716, 722 (Pa. 1992).

By contrast, federal courts in this circuit examining habeas petitions look to ineffectiveness claims in the aggregate.<sup>1</sup> As the Third Circuit explained, "We recognize that errors that individually do not warrant habeas relief may do so when combined." *Albrecht v.*

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<sup>1</sup> See, e.g., *United States v. Winkelman*, 548 F.Supp.2d 142, 151 (M.D. Pa. 2-2008) (citing *United States ex rel. Sullivan v. Cuyler*, 631 F.2d 14, 17 (3d Cir. 1980) in analyzing the cumulative effect of the ineffective assistance claims); *Brand v. Gillis*, 210 F.Supp.2d 677, 688 n.12 (E.D. Pa. 2002) (finding that the cumulative effect of any of counsel's deficiencies did not cause a fundamentally unfair outcome at trial); *United States v. Jasin*, 215 F.Supp.2d. 552, 580-82 (E.D. Pa. 2002) (analyzing the cumulative prejudice of counsel's failure to interview and call multiple witnesses and failure to investigate the availability of expert witnesses); but see *Parmelee v. Piazza*, 622 F.Supp.2d. 212 (M.D. Pa. 2008) (analyzing five claims of ineffectiveness separately).

*Horn*, 485 F.3d 103, 139 (3d Cir. 2007). See also *Marshall v. Hendricks*, 307 F.3d 36, 94 (3d Cir.2002) (evaluating prejudice in light of cumulative errors); *Berryman v. Morton*, 100 F.3d 1089, 1097-1102 (3d Cir.1996) (evaluating the reasonableness of trial counsel's strategy with respect to each alleged error, then determining whether the combined errors constituted prejudice); *United States ex rel. Sullivan v. Cuyler*, 631 F.2d 14, 17 (3d Cir. 1980) (stating in dicta that “unified consideration of the claims in the petition well satisfies the interests of justice because the cumulative effect of the alleged errors may violate due process”). Admittedly, the federal law in this area is murky: There is a distinct circuit split,<sup>2</sup> and the Third Circuit has not explicitly explained whether claims are considered in the aggregate under the Sixth Amendment right to counsel, or whether the cumulative error approach is analyzed solely under a due process

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<sup>2</sup> Some circuits hold that *Strickland* itself requires a cumulative analysis, while other circuits hold that aggregating claims is proper only if it shows a fundamentally unfair trial. Compare *Kubat v. Thieret*, 867 F.2d 351, 370 (7th Cir. 1989) (relying on “errors” language from *Strickland* to find that “*Strickland* clearly allows the court to consider the cumulative effect of counsel’s errors in determining whether a defendant was prejudiced.”); *Dugas v. Coplan*, 428 F.3d 317, 335 (1st Cir. 2005) (adopting the reasoning from *Kubat*); *Lindstadt v. Keane*, 239 F.3d 191, 199 (2d Cir. 2001) (finding that “totality of the circumstances” language from *Strickland* mandates an aggregate error analysis); *Richards v. Quarterman*, 566 F.3d 553, 564 (5th Cir. 2007) (“We will address each aspect of Davis’s performance the district court found deficient before considering whether Richards was cumulatively prejudiced thereby.”); and *Gonzales v. McKune*, 247 F.3d 1066, 1078 n.4 (10th Cir. 2001), *vacated in part on other grounds*, 279 F.3d 922, 925-26 (10th Cir. 2002) (en banc) (noting that language from *Strickland* “makes it clear that all acts of inadequate performance may be cumulated in order to conduct the prejudice prong.”) with *Pope v. McNeil*, 680 F.3d 1271, 1297 (11th Cir. 2012) (Eleventh Circuit will not consider a cumulative-error claim absent showing of a fundamentally unfair trial); *Fairbank v. Ayers*, 650 F.3d 1243, 1257 (9th Cir. 2011) (aggregate errors may justify relief if it renders the trial fundamentally unfair); *Middleton v. Roper*, 455 F.3d 838, 851 (8th Cir. 2006) (“a habeas petitioner cannot build a showing of prejudice on a series of errors, none of which would by itself meet the prejudice test.”); and *Fisher v. Angelone*, 163 F.3d 835, 852 (4th Cir. 1998) (“To the extent this Court has not specifically stated that ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively, we do so now.”).

rubric, in determining whether the aggregated errors led to a fundamentally unfair trial.<sup>3</sup> Either way, this court must consider Williams’ claims in the aggregate to determine whether they cumulatively prejudiced Williams. Because the state courts did not examine the cumulative effect of Williams’ ineffectiveness claims, their opinions are owed no deference under 28 U.S.C. § 2254(d)(1), and the Antiterrorism and Effective Death Penalty Act—which requires federal habeas courts to defer to state court decisions on the merits unless the decision is a contrary to or an unreasonable application of federal law—does not apply. *See Albrecht*, 485 F.3d at 139 n.17 (“The state courts did not address a claim of cumulative prejudice flowing from the errors we have identified, and thus no deference is owed under 28 U.S.C. § 2254(d)(1)”)<sup>4</sup> And because the Magistrate Judge did not address this point in his Report and Recommendation, I address it here.

“A cumulative-error analysis merely aggregates all the errors that individually have been found to be harmless, and therefore not reversible, and it analyzes whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determined to be harmless.” *Albrecht*, 485 F.3d at 139 (*quoting Darks v. Mullin*, 327 F.3d 1001, 1018 (10th Cir.2003)). The errors must have had a “substantial and injurious effect or influence in

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<sup>3</sup> The distinction may be irrelevant. *See Whitney v. Horn*, 280 F.3d 240, 258-59 (3d Cir. 2002) (characterizing the prejudice standard under *Strickland* and the cumulative error standard under *Brecht v. Abrahamson*, 507 U.S. 619 (1993) as essentially the same).

<sup>4</sup> *See also Simmons v. Beard*, 590 F.3d 223, 233 (3d Cir. 2009) (“Finally, we do not defer to the Pennsylvania Supreme Court on the question of the cumulative materiality of the prosecution's Brady violations because...the court did not reach the issue of the collective effect of multiple violations.”); *Pursell v. Horn*, 187 F. Supp. 2d 260, 352 (W.D. Pa. 2002) (where Pennsylvania Supreme Court did not address a claim based on the cumulative effect of the prosecutorial misconduct, the court reviewed the claim de novo).

determining the jury's verdict” and a habeas petitioner must demonstrate actual prejudice in order to be entitled to relief based on cumulative error. *Fahy v. Horn*, 516 F.3d 169, 205 (3d Cir.2008).

Examining the prejudicial effects of Williams’ attorney’s ineffectiveness in the does not change the result. Only one of Williams’ two claims of ineffectiveness—his attorney’s failure to request funding for DNA testing—has merit. As a result, there are no additional claims to which this error could be aggregated; Williams cannot have suffered prejudice under the cumulative effect of only one error.

The Report and Recommendation is thorough and clear, and I adopt it to the extent that it is consistent with this opinion. Accordingly, I deny Williams’ petition for habeas corpus relief.

### **ORDER**

**AND NOW**, this 4th day of December, 2012, upon careful and independent consideration of the petition for writ of habeas corpus, the parties’ briefs, the United States Magistrate Judge’s Report and Recommendation, and Petitioner’s objections to the Report and Recommendation, it is **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**, to the extent consistent with this Explanation;
2. The petition for a writ of habeas corpus is **DISMISSED** without an evidentiary hearing; and
3. There is no basis for the issuance of a certificate of appealability.

s/Anita B. Brody

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ANITA B. BRODY, J.

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