

[J-49-2025] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 818 CAP
	:	
Appellant	:	Appeal from the Order of the
	:	Court of Common Pleas of Berks
	:	County, Criminal Division, entered
v.	:	on July 9, 2024, at Docket No.
	:	CP-06-CR-0002456-2008.
	:	
ALBERT PEREZ,	:	SUBMITTED: April 2, 2025
	:	
Appellee	:	

CONCURRING AND DISSENTING OPINION

JUSTICE WECHT

DECIDED: August 18, 2026

In this capital case, the parties agreed to bifurcate litigation of the issues raised in Albert Perez’s Post Conviction Relief Act¹ petition. Per the agreement, the PCRA court would resolve six claims initially. A grant of relief on any of these claims would obviate the need to address the remaining claims. A denial of relief on the six initial claims would mean that a hearing would ensue on the remaining claims. The PCRA court held a hearing on the six initial claims, and ultimately granted Perez a new trial.

Specifically, the PCRA court found (1) that trial counsel was ineffective in his cross-examination of Commonwealth witness Donald Sumner; (2) that the Commonwealth violated its obligations under *Brady v. Maryland*² for failing to disclose information about Sumner’s criminal history; (3) that the Commonwealth violated Perez’s right to a fair trial

¹ 42 Pa.C.S. §§ 9541-46.

² 373 U.S. 83 (1963).

under *Napue v. Illinois*,³ again with regard to the testimony of Sumner; and (4) that trial counsel was ineffective in failing to seek suppression of two of Perez's statements to police officers. The PCRA court denied relief on the two other claims.

Today's Majority reverses the PCRA court's order, concluding that the PCRA court erred in granting relief on the three claims regarding Sumner's testimony because Perez failed to demonstrate that he suffered prejudice as a result of these purported errors. The Majority holds that, although the Commonwealth's evidence was circumstantial, it was overwhelming in establishing guilt, that Perez's defense was not credible, and that Perez did not demonstrate the prejudice required to establish a right to relief on the three Sumner-related claims. The Majority also reverses the PCRA court's grant of relief on the ineffectiveness claim premised upon counsel's failure to seek suppression of two of Perez's pre-trial statements to police officers. Finally, the Majority rejects Perez's argument that he is entitled to relief because of the cumulative prejudice stemming from the errors upon which the Sumner-related claims are predicated.

The Majority is correct as to the claims of ineffectiveness and the *Brady* claim. I join the Majority's rejection of these claims. With regard to the *Napue* claim, however, I join Justice McCaffery's Concurring and Dissenting Opinion.

I agree with the Concurring and Dissenting Opinion that the Majority misstates a PCRA petitioner's burdens in prevailing on a *Napue* claim. The Majority asserts that any PCRA claim premised upon a constitutional error or counsel ineffectiveness, regardless of the requirements of the underlying claim, are subject to the one-size-fits-all prejudice standard of Section 9543(a)(2)(i), (ii).⁴ This may be true for counsel ineffectiveness

³ 360 U.S. 264 (1959).

⁴ Maj. Op. at 62, n.71; 42 Pa.C.S. § 9543(a)(2)(i), (ii).

claims⁵ and *Brady* claims.⁶ It is not true for *Napue* claims. As the Concurring and Dissenting Opinion explains, *Napue* materiality is a more defense-friendly standard than materiality under *Brady* or prejudice under *Strickland*.⁷ A petitioner advancing a *Napue* claim must do so under the constitutional standards necessary for relief on a *Napue* claim. The “truth determining” language of Section 9543(a)(2) is read in the context of the underlying constitutional claim.⁸

After the PCRA court granted relief to Perez on his *Napue* claim, the Supreme Court of the United States refined the requirements for relief under *Napue* in *Glossip v. Oklahoma*.⁹ For the reasons advanced by the Concurring and Dissenting Opinion, the PCRA court should have the opportunity to apply this refinement of the law before this Court reviews its analysis. Our remand to that court should encompass the *Napue* claim.

In any event, because of the procedure agreed upon by the parties in the PCRA court, Perez is still entitled to resolution of his remaining claims. The PCRA court must examine each remaining issue on its own terms. That means that, to the extent that the

⁵ *Commonwealth v. Kimball*, 724 A.2d 326, 332 (Pa. 1999) (“We find that the language of the PCRA does not create a higher burden on a defendant to show ineffective assistance of counsel than the standard for proving ineffectiveness on direct appeal.”); *id.* at 333 (“By holding that the PCRA standard does not impose a more onerous burden on a defendant than that required by [*Commonwealth v.*] *Pierce*[, 527 A.2d 973 (Pa. 1987)], we do not rewrite the PCRA nor alter the test for proving ineffective assistance of counsel in a PCRA petition.”).

⁶ See, e.g., *Commonwealth v. Lesko*, 15 A.3d 345, 417 (Pa. 2011) (holding that “the measure of *Brady* materiality and *Strickland* prejudice are the same: a grant of relief depends upon finding a reasonable probability that the result of the proceeding would have been different”); see also Concurring and Dissenting Op, at 4, n.8

⁷ Concurring and Dissenting Op. at 4-5.

⁸ See *id.* at 9.

⁹ 604 U.S. 226, 246 (2025).

remaining claims require a showing of prejudice, the PCRA court is required to engage in a claim-specific assessment of prejudice.

Where there are multiple claims that require a prejudice analysis, a court may not simply review the evidence of guilt, characterize it as overwhelming, and use that characterization to sweep away multiple post-conviction claims. Prejudice operates at a claim-specific level and, for purposes of cumulative prejudice, in the aggregate. Asking whether there was sufficient evidence of guilt is not a proxy for an inquiry into prejudice, materiality, or the statutory requirements of Section 9543(a)(2)(i) or (ii),¹⁰ as it relates to the particular claims being raised by the petitioner. Rather, prejudice depends upon the nature of the specific claim.¹¹ Prejudice may be established even in a case involving substantial or overwhelming evidence of guilt.

The framework of the PCRA itself and the legal standards necessary to establish relief on individual substantive claims ensure that overwhelming evidence of guilt, such as that described by the Majority, cannot serve as a universal rejection to PCRA claims. Subsections 9543(a)(2)(i) and (ii) in particular frame eligibility in terms of the effect of each asserted ground for relief upon the truth-determining process. And each substantive claim carries its own burdens. A court cannot collapse the inquiry into a single, generalized conclusion about the trial evidence. On remand, therefore, it is the role of the PCRA court here to assess each claim before it in the first instance and on its own individual merit. The Majority's prejudice analysis here shall not be interpreted to mean that Perez cannot establish prejudice in his remaining claims.

¹⁰ 42 Pa.C.S. § 9543(a)(2)(i), (ii).

¹¹ See *Commonwealth v. Reaves*, 923 A.2d 1119, 1128 (Pa. 2007) (recognizing that the prejudice inquiry is shaped by the nature of the claim being asserted); *Commonwealth v. Jones*, 210 A.3d 1014, 1019 (Pa. 2019).

For a claim of cumulative prejudice, the PCRA court must consider the cumulative prejudicial effect of individual claims that fail due to a lack of prejudice.¹² The Majority's rejection of Perez's cumulative prejudice argument concerns only the three Sumner-related claims. If the PCRA court were to reject additional claims for lack of prejudice, any cumulative prejudice analysis would have to account for these additional claims.

¹² See, e.g., *Commonwealth v. Johnson*, 353 A.3d 609, 627 (Pa. 2026).