could be useful proof of future dangerousness in the Bryant murder prosecution. The Court does not ***635** read *Moulton* to support any of these arguments.

To be clear, the record does not unequivocably establish that Jones was arrested on traffic warrants because he was a suspect in Bryant's murder. Gates testified that she wanted to speak to him about people he had brought to his aunt's house to do yard work. It was only after speaking to Jones for a while that Gates learned Jones was in the neighborhood on the night of the murder. (4 RR 75, 115; 31 RR 110, 121, 125-26, 197-98.)[8] But, assuming his arrest on traffic warrants was a pretext to place him in custody for questioning about the murder, *Moulton* does not provide authority for a *de-facto*-arrest rule.

Jones contends that *Moulton* stands for the general rule that the police violate the Sixth Amendment when they intentionally create an opportunity to confront the accused without counsel being present. (Doc. 149, p. 14-19). The holding in *Moulton* is not so broad. In *Moulton,* the police used a co-indictee to elicit incriminating statements from Moulton. Moulton was indicted for theft; thus, there was no dispute that Moulton's Sixth Amendment right to counsel, unlike Jones's, was attached in the theft case when he made the incriminating statements. *Moulton* did not need to address, and did not purport to address, *when* the Sixth Amendment right attached. Rather, the critical issue was whether the Sixth Amendment violation (caused by the police using a co-indictee to circumvent Moulton's right to have counsel present) could be cured by the fact that the police used the co-indictee to also investigate new offenses *to which there had been no Sixth Amendment attachment*, namely threats to the co-indictee and a short-lived plan to murder witnesses in the upcoming trial. The government argued that law enforcement had the right and duty to investigate these new offenses by using the co-indictee, which cured any improprieties under the Sixth Amendment. The Supreme Court disagreed:

> To allow the admission of evidence obtained from the accused in violation of his Sixth Amendment rights whenever the police assert an alternative, legitimate reason for their surveillance invites abuse by law enforcement personnel in the form of fabricated investigations and risks the evisceration of the Sixth Amendment right recognized in *Massiah*. *On the other hand, to exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time, would unnecessarily frustrate the public's interest in the investigation of criminal activities*. Consequently, incriminating statements pertaining to pending charges are inadmissible at the trial of those charges, notwithstanding the fact that the police were also investigating other crimes, if, in obtaining this evidence, the State violated the Sixth Amendment by knowingly circumventing the accused's right to the assistance of counsel.

Moulton, 474 U.S. 180, 106 S.Ct. 477 (emphasis added) (footnote omitted). Thus, *Moulton* does not address or support Jones's assertion that his right to counsel attached in the Bryant murder prosecution ***636** when he was arrested on the traffic warrants.

Moreover, *Moulton* does not support Jones's argument that Ranger Akin violated the Sixth Amendment by questioning him without counsel about a different, uncharged double murder. These facts were not present in *Moulton,* as the statements admitted at Moulton's trial were "principally those involving direct discussion of the thefts for which Moulton was originally indicted." *Id.* at 167. *Moulton* did not address the admissibility of Moulton's statements regarding his inchoate plan to kill witnesses, as the prosecution did not offer those statements. *Id.* If anything, the italicized language quoted above suggests that the exclusion of the Akin statement, simply because other charges were pending at the time, would unnecessarily frustrate the public's interest in the investigation of new crimes.

Jones cites cases from the Illinois Supreme Court, the Delaware Supreme Court, and the Texas Court of Criminal Appeals to support his argument. *Wesbrook v. State,* 29 S.W.3d 103, 118 (Tex.Crim.App.2000); *People v. Kidd*, 129 Ill.2d 432, 452, 544 N.E.2d 704, 712–13, 136 Ill.Dec. 18 (1989); *Jackson v. State*, 643 A.2d 1360, 1372 (Del. 1994).

These cases extend *Moulton* to prohibit the admission at sentencing of post-attachment statements obtained from the accused that relate to an uncharged offense. These cases are based on dicta in a *Moulton* footnote and are otherwise questionable. *See, e.g., Thompson v. State*, 108 S.W.3d 269, 270 (Tex.Crim.App.2003) (Keasler, J., concurring and dissenting) (advocating overruling *Wesbrook*); *Frye v. Commonwealth*, 231 Va. 370, 391-92, 345 S.E.2d 267 (Va. 1986) (holding that the *Moulton* proscription against the knowing circumvention of the right to counsel extends only to pending charges concerning which the right has attached); *State v. Lale*, 141 Wis.2d 480, 487, 415 N.W.2d 847 (Wis.Ct.App.1987) (holding that *Moulton* does not stand for the proposition that initiation of formal proceedings on one set of charges creates a Sixth Amendment right to counsel on other unfiled charges).

In any event, state-court decisions do not establish controlling precedent for federal habeas review. And controlling federal precedent includes only the holdings, as opposed to the dicta, of Supreme Court decisions. *White v. Woodall*, —— U.S. ——, 134 S.Ct. 1697, 1701, 188 L.Ed.2d 698 (2014). Accordingly, Jones's interpretation of *Moulton* does not control claim 1.

The state court here ruled that no Sixth Amendment right had attached when Jones cooperated with law enforcement. It held in the alternative that Jones knowingly waived his rights and did not request counsel. Jones has not met his burden under § 2254(d) to show that these rulings were "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103, 131 S.Ct. 770.

C. *Brecht* prejudice analysis

[10] Respondent alternatively contends that, regardless of any error, Jones is not entitled to relief because he has not shown prejudice. Under federal law, the harmless-error analysis asks whether the error had a "substantial and injurious effect or influence in determining the jury's verdict." *See Hopkins v. Cockrell*, 325 F.3d 579, 585 (5th Cir.2003) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 637–38, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993)). This stringent standard compels habeas relief only if the constitutional error resulted in "actual prejudice." *See Brecht*, 507 U.S. at 637, 113 S.Ct. 1710. If the error did not influence the jury, or had but very slight effect, the conviction should stand. *See O'Neal v. McAninch*, 513 U.S. 432, 437, 115 S.Ct. 992, 130 L.Ed.2d 947 (1995) ***637** (quoting *Kotteakos v. United States*, 328 U.S. 750, 776, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946)). If the Court is in "grave doubt" about whether the error had a substantial and injurious effect, then the error is not harmless. *Id.* at 436, 115 S.Ct. 992.

Jones contends that the admission of the Gates statement at his trial was the equivalent of being forced to represent himself and that prejudice should be presumed under *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963) because nothing counsel could do at trial could ever cure the one-sided confrontation that resulted in his confession. (Doc. 149, p. 22). *White* is inapposite, however, because it involved an uncounseled guilty plea, where the degree of prejudice can never be known because only counsel could have enabled the accused to know all the defenses available before he plead guilty. *White*, 373 U.S. at 60, 83 S.Ct. 1050 (citing *Hamilton v. Alabama*, 368 U.S. 52, 55, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961)). The alleged error in this case is the admission of an uncounseled confession during the presentation of the case to the jury. This would be constitutional trial error which "is amenable to harmless-error analysis because it may be quantitatively assessed in the context of other evidence presented." *Brecht*, 507 U.S. at 629, 113 S.Ct. 1710 (ellipsis and internal quotes omitted). The Court therefore does not presume prejudice.

Jones also argues that, by the time he was appointed counsel, he had confessed to all three murders such that his conviction and death sentence were foregone conclusions. Respondent contends that other, overwhelming evidence at the guilt and punishment phases rendered any error harmless.

Overwhelming evidence of guilt can render constitutional trial error harmless. *E.g. Burgess v. Dretke*, 350 F.3d 461, 472 (5th Cir.2003). The Court finds such evidence in this case. Freeman testified that Jones never came home after she drove him to his aunt's neighborhood on the night of her murder. (29 RR 270-71; 31 RR 73.) Tiffany testified that she took Jones to his aunt's house, and when Jones returned, he had acquired $30 for drugs and was "wide-eyed and scared" and looking over his shoulder. (31 RR 73-79.) After Detective Gates left her card on his door, Jones demonstrated a guilty conscience by convincing Freeman to leave work early and attempting to flee by hiding in the backseat of her car. (29 RR 271-74.) DNA consistent with the victim's DNA was found on Jones's clothing. [9] (30 RR 192-93.) And, while in jail and represented

by counsel, Jones called Mattie Long and apologized for the killing. (29 RR 55-56.)

The Court similarly concludes that, given the other evidence of Jones's future dangerousness, including evidence of his participation in the Sanders and Peoples murders, the admission of the Akin statement at punishment did not prejudice Jones. Freeman's son testified that, one day during a time when Roosa lived with them, Jones asked him and his brother to go to a friend's house because Jones and Roosa might do something bad that Jones "would have to go to jail for." The boys played down the street for a while, and a black car drove up to their house. When they returned home, the black car was gone, nobody was home, and there was blood on the floor and wall. Using Luminol, the police later found blood stains on the floor and wall near the couch, as well ***638** as the couch itself. (34 RR 54-58, 172-77). Freeman testified that when she found the blood stains in her house, Jones told her that he had been in a fight with a friend. But the next time she saw him, he wanted money to leave town. (35 RR 14-16). Jones's sister, Keisha, gave her probation officer and Ranger Akin information that she had received directly from Jones regarding his participation in the Sanders and Peoples murders. Keisha acknowledged much of that information in her testimony, but said Jones only acted because Roosa had threatened Freeman and her kids. Keisha testified that Jones told her he had been talking to Peoples about buying drugs when Roosa hit Peoples on the head with a barbell. They tied Peoples around the neck and took his money, jewelry, and cocaine. Jones then went out to the car and talked Sanders into coming into the house, luring him to his death. Jones and Roosa then loaded the bodies into the car and left. (35 RR 93-101). In addition to the testimony of Freeman, Freeman's son, and Keisha, mental-health experts for both the State and the defense spoke frankly about Jones's participation in the double murder, based on his statements during his evaluations. (35 RR 201-03; 36 RR 84-85.)

The jury's future-dangerousness finding was also supported by the brutal bludgeoning of the victim, an elderly relative of Jones, Jones's involvement in the Hoova Crips gang, and his juvenile history, including an assault on two teachers, possession of a handgun, and setting fire to another student's hair. Given all the other evidence presented at trial, Jones fails to show that his uncounseled confessions had a substantial influence on the jury's verdict. *See O'Neal*, 513 U.S. at 437, 115 S.Ct. 992. He fails to demonstrate prejudice under *Brecht.*

In sum, claim 1 is procedurally barred. The Court also holds, in the alternative, that the state court's denial of the Sixth Amendment claim was not unreasonable, and alternatively, there is no *Brecht* prejudice. The Court denies claim 1.

D. Claim 1a

In a related, unnumbered claim ("claim 1a"), Jones contends that trial counsel rendered ineffective assistance by failing to assert this Sixth Amendment violation at trial. (Doc. 129, p. 50.) Respondent does not address this new claim in his answer. In his Reply, Jones argues that the subclaim is not limitations-barred because it relates back to claim one. He also argues that his failure to exhaust does not result in procedural default because state habeas counsel's ineffectiveness excuses any default. Jones contends the claim may be reviewed by this Court *de novo*. (Doc. 149, p. 5-11.)

Under the AEDPA's exhaustion requirement, a federal court may not grant habeas relief unless it appears that the applicant has exhausted the remedies available in the courts of the state. *See* § 2254(b)(1)(A); *Richter*, 562 U.S. at 103, 131 S.Ct. 770. This requirement is satisfied when the substance of the federal habeas claim has been fairly presented to the highest state court. *Morris v. Dretke*, 413 F.3d 484, 491 (5th Cir.2005) (quoting *Mercadel v. Cain*, 179 F.3d 271, 275 (5th Cir.1999)). "A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement." *See* § 2254(b)(3); *Woodfox v. Cain*, 609 F.3d 774, 792–793 (5th Cir.2010). An application for habeas relief may be denied on the merits, notwithstanding the failure of the applicant to exhaust state remedies. § 2254(b)(2).

[11] **[12]** When a claim has not been exhausted, and the state court to which the petitioner would be required to present his ***639** claim in order to meet the exhaustion requirement would now find the claims procedurally barred, the claim is defaulted for purposes of federal habeas review. *Coleman v. Thompson*, 501 U.S. 722, 735 n. 1, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); *Williams v. Thaler*, 602 F.3d 291, 305 (5th Cir.2010). For unexhausted claims of ineffective assistance of trial counsel that are deemed "substantial," however, the ineffective assistance of state habeas counsel may excuse any procedural bar. *See Trevino v. Thaler*, —— U.S. ——, 133 S.Ct. 1911, 1918, 185 L.Ed.2d 1044 (2013); *Martinez v. Ryan*, —— U.S. ——, 132 S.Ct. 1309, 1320, 182

L.Ed.2d 272 (2012). A claim is "substantial" if it has "some merit." *Martinez*, 132 S.Ct. at 1318.

The Court need not address the arguments lodged by Jones to surmount limitations and procedural default because the record is sufficient to review and deny this claim on the merits. *See Busby*, 359 F.3d at 720 (noting that habeas court may look past any procedural default if the claim may be resolved more easily on the merits); *Barksdale v. Quarterman*, No. 3:08–CV–736, 2009 WL 81124, at *3, n. 4 (N.D.Tex. Jan. 9, 2009) (Kinkeade, J.) (noting that Court need not address alleged limitations bar because claims lack merit); *Russell v. Cockrell*, No. 3:01–CV–1425, 2003 WL 21750862, at *3, n. 3 (N.D.Tex. July 25, 2003) (Fitzwater, J.) (holding that court need not address potential limitations bar where claim has no merit). This claim against trial counsel is a derivative claim; it has merit only to the extent the Sixth Amendment claim upon which it is based has merit. The Court has already addressed Jones's Sixth Amendment argument and rejected his interpretation of *Moulton*. The Court did so under the deferential standard of review in § 2254, however, a *de novo* review yields the same conclusions for the same reasons. The Court also concluded that any error would be harmless under *Brecht*.

Therefore, trial counsel were not ineffective for failing to lodge a Sixth Amendment objection at trial. *See Koch v. Puckett*, 907 F.2d 524, 527 (5th Cir.1990) (holding that *Strickland* does not require counsel to make futile motions or objections); *Romero v. Lynaugh*, 884 F.2d 871, 879 (5th Cir.1989) (holding that counsel is not ineffective for failing to block the receipt of evidence that is clearly admissible). The Court concludes that claim 1a has no merit and that the procedural-bar exception in *Martinez/Trevino* is unavailable because the claim is not "substantial." The Court denies claim 1a.

II. Claim 5: The Akin statement

[13] The CCA on direct appeal ruled that the admission of the Akin statement during the punishment phase violated Jones's Fifth Amendment rights as protected by *Miranda*, but concluded that it was harmless error under *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). In claim 5, Jones challenges the *Chapman* analysis.

The CCA first held that Jones's waiver of his Fifth Amendment rights was constitutionally invalid under the circumstances. The State had argued under *Elstad* that Jones's written confession, signed after *Miranda* warnings were properly given and waived, need not have been suppressed solely because Akin had obtained the earlier, unwarned (but voluntary) oral confession. *See Oregon v. Elstad*, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985). The CCA disagreed and distinguished *Elstad,* concluding that Jones did not give two statements but gave one unwarned statement, observing "at the very least, a serious misunderstanding by law enforcement ... of the dictates of *Miranda*." *Jones*, 119 S.W.3d at 773-75.

But the CCA found the error harmless after a lengthy analysis. It first noted that the sentencing phase of trial does not focus ***640** on whether Jones committed the extraneous murders, but on whether he would probably commit future criminal acts of violence that would constitute a continuing threat to society and whether there are sufficient mitigating circumstances to warrant a life sentence rather than a death sentence. With this background, the CCA concluded: (1) the State established Jones's involvement in the extraneous murders through several witnesses independent of the Akin statement, (2) other evidence supported the jury's answer to the special issues, namely the brutal beating of his kindly aunt, several assaultive juvenile offenses, and his gang membership, (3) the content of the statement itself included self-serving assertions that Roosa was the primary actor and that Jones simply followed Roosa's directions which, if believed by the jury, mitigated Jones's responsibility and supported the defensive theory that Roosa set Jones down the path toward his alter ego's murder of his aunt, (4) the State only mentioned the Akin statement twice during closing arguments, one of which was "troubling" but nevertheless dismissed as a rhetorical flourish in response to the defense argument, and (5) there were no collateral implications detrimental to Jones's overall mitigation case, which rested on an asserted dissociative mental disorder, and Jones did not dispute at trial or on appeal that he had, in fact, participated in the Sanders/Peoples murders. *Jones*, 119 S.W.3d at 777–83.

Jones contends that this ruling was unreasonable in law and fact because (1) the "clearly established federal law" is a four-Justice holding in *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) that the harmless-error rule does not apply to erroneously admitted coerced confessions, (2) the CCA underestimated the prosecutors' emphasis on the Akin statement, and (3) the CCA's finding that the Akin statement contained "a wealth of mitigating facts" is unreasonable because the statement implicated Jones

in the double murder. (Doc. 129, p. 107-09, 114). Respondent argues that the CCA properly conducted its inquiry under *Chapman*. (Doc. 146, p. 80-84).

In *Chapman*, the Supreme Court held that "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." *Chapman*, 386 U.S. at 24, 87 S.Ct. 824. The State bears the burden of proving that an error passes muster under this standard. *Id.*; *Brecht*, 507 U.S. at 630, 113 S.Ct. 1710. The parties agree that the Court reviews the state court's *Chapman* analysis for reasonableness under the deferential standard of review in § 2254(d). (Doc. 129, p. 104; doc. 146, p. 81.) In conducting this review, the CCA's ultimate decision is tested, not every jot of its reasoning. *Morrow v. Dretke*, 367 F.3d 309, 314 (5th Cir.2004) (citing *Santellan v. Cockrell*, 271 F.3d 190, 193 (5th Cir.2001)).

For two reasons, the Court initially disagrees that the four-justice holding in *Fulminante* is the applicable federal law. First, *Fulminante* addresses coerced confessions that violate the Fifth and Fourteenth Amendments. The error found in this case, on the other hand, was a violation of *Miranda*, which requires the exclusion of unwarned statements even if they are voluntary and not coerced. *Jones*, 119 S.W.3d at 772–76 (analyzing this claim under *Miranda* and *Elstad* not *Fulminante*); *see Elstad*, 470 U.S. at 307, 105 S.Ct. 1285. In a nutshell, the CCA found that Jones's waiver of his rights was constitutionally invalid because Akin did not *Mirandize* Jones before questioning him. *Jones*, 119 S.W.2d at 775. While inadmissible, such non-*Mirandized* statements are not necessarily involuntary or coerced within the meaning of *Fulminante*. *See* ***641** *Dickerson v. United States*, 530 U.S. 428, 444, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000) (noting that the disadvantage of the *Miranda* rule is that statements which may be by no means involuntary may nonetheless be excluded). In this very case, for example, the defense expert did not think Jones's statements resulted from undue susceptibility to police interrogation procedures. (35 RR 150.)

Second, even if *Fulminante* applied, Jones's interpretation of its holding does not withstand scrutiny. For support, Jones cites *Panetti v. Quarterman*, 551 U.S. 930, 127 S.Ct. 2842, 168 L.Ed.2d 662 (2007) and its application of *Marks v. United States*, 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977). *Marks* holds, according to *Panetti*, that when there is no majority decision, the narrower holding controls. *Panetti*, 551 U.S. at 949, 127 S.Ct. 2842 (citing *Marks*, 430 U.S. at 193, 97 S.Ct. 990). As Jones acknowledges, the *Fulminante* Court was not fragmented on the matter of whether a harmless-error analysis should apply. Five Justices agreed that a harmless-error analysis *should* apply to the erroneous admission of a coerced confession, though a different majority found the error harmful, resulting in a reversal of Fulminante's conviction. The Court therefore disagrees with Jones that the alleged error in this claim is structural error under *Fulminante. Fulminante*, 499 U.S. at 309 (noting that admission of involuntary confession is classic trial error); *see also Neder v. United States*, 527 U.S. 1, 18, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999).

The Court next addresses Jones's argument that the CCA under-estimated the State's emphasis on the error. His argument on this point is conclusory; he reiterates the prosecutors' closing arguments that the CCA specifically quoted and addressed, and then concludes the CCA failed to give appropriate consideration and weight to the facts. Mere disagreement with the state court does not demonstrate unreasonableness. *See Orman v. Cain*, 228 F.3d 616, 619 (5th Cir.2000). Jones also points to an exchange on cross-examination between his counsel and Ranger Akin, in which Akin concedes he did not give Jones *Miranda* warnings prior to questioning. (Doc. 129, p. 114); (34 RR 148). Jones does not clarify how defense counsel's cross-examination can affect an analysis of the *State's* emphasis of the error. Even if it could, the exchange does not discuss the contents of the statement but rather the circumstances surrounding its production.

Next, Jones asserts that the CCA improperly credited mitigating facts contained within the Akin statement. The essence of this argument is that a harmless-error analysis must overlook factors that do not favor Jones's position. Jones provides no clearly established federal law that a harmless-error analysis cannot consider the total impact—both the good and the bad—of the erroneously admitted statement. On the contrary, a review under *Chapman* considers the "trial record as a whole." *See United States v. Hasting*, 461 U.S. 499, 509, 103 S.Ct. 1974, 76 L.Ed.2d 96 (1983). The state-court ruling is not unreasonable for crediting mitigating facts in the Akin statement.

Jones makes two additional arguments in his reply. He asserts that the emphasis on other evidence showing Jones's participation in the murders is improper because the CCA should not have assumed that the State could have proven Jones's participation in the double murder without the Akin statement. To the extent that Jones may be suggesting that

Miranda requires suppression of the "fruits" of an unwarned statement, the Supreme Court has rejected this argument where the unwarned statement is voluntary. *See United States v. Patane*, 542 U.S. 630, 639, 124 S.Ct. 2620, 159 L.Ed.2d 667 (2004) (citing *Elstad*, 470 U.S. at 307, 105 S.Ct. 1285). ***642** Moreover, in this case, the other evidence showing Jones's participation in the double murder were not "fruits" of Jones's unwarned statement but flowed from Keisha's statements to her probation officer and the independent recollections of Freeman and her son, all of which are untainted by any constitutional violation. (4 RR 247; 34 RR 94-96.)

Finally, Jones complains that Respondent's argument fails to acknowledge the devastating impact a confession has on the jury. The CCA opinion, however, "emphasizes that a defendant's confession is generally likely to have a profound impact on a jury" and concluded specifically that the Akin statement did not carry the weight a confession might normally bear. *Jones*, 119 S.W.3d at 780, 783. Jones's suggestion that this concept was overlooked by the CCA is not supported by the record.

Jones fails to demonstrate that the CCA's *Chapman* analysis was unreasonable. The Court denies claim 5.

CLAIMS NOT PRESENTED IN STATE COURT

I. Claims 2, 3, and 4

In claim 2, Jones asserts that trial counsel rendered ineffective assistance under *Wiggins v. Smith* by failing to sufficiently investigate mitigating information about Jones's life. (Doc. 129, p. 52). In claim 3, Jones alleges that counsel failed to develop condition-of-the-mind evidence that could have negated the *mens rea* and lessened Jones's moral culpability in the punishment phase. (Doc. 129, p. 79). In claim 4, Jones argues that counsel failed to conduct an adequate life-history investigation, causing his experts to provide unreliable evaluations on sanity, competency to confess, competency to stand trial, and mental-health based mitigation. (Doc. 129, p. 91.)

Respondent initially contends these claims are barred by the statute of limitations. (Doc. 146, p. 22.) Jones replies that the same facts that justified equitable tolling for the original petition justify equitable tolling for these new claims. Jones also argues that it would violate the interests-of-justice standard for the substitution of counsel to limit his claims to those raised in the original petition, given that this Court removed original federal counsel and later concluded (for purposes of equitable tolling) that the attorney-client relationship was mutually undesired. *See Martel v. Clair*, —— U.S. ——, 132 S.Ct. 1276, 182 L.Ed.2d 135 (2012). Jones argues that limiting his claims to those raised in the original petition would violate *Christeson v. Roper*, —— U.S. ——, 135 S.Ct. 891, 190 L.Ed.2d 763 (2015), which requires the substitution of federal counsel to avoid a conflict of interest in the pursuit of post-dismissal remedies when the initial federal petition was time-barred. Finally, citing to Fourth Circuit precedent, Jones argues that Jack Strickland was ineffective as state habeas counsel and that *Martinez/ Trevino* would have no meaning if claims could not be raised after the statute of limitations has run. (Doc. 149, p. 33-43.)

Respondent also contends that the new claims are procedurally barred due to a failure to exhaust in state court and are merit-less. (Doc. 146, p. 23, 48.) Jones replies that *Martinez/Trevino* excuses any procedural default based on a failure to exhaust because Jack Strickland was ineffective as state habeas counsel. Jones asserts that he has shown deficient performance under *Strickland* by pointing to red flags in the record that placed trial counsel and state habeas counsel on notice that more investigation needed to be done. He states that he has attempted to show prejudice but, to the extent he has not carried his burden to show prejudice, it is because this Court denied him the time and funding to do so. For the same reason, he asserts that it is premature for the Court ***643** to address these claims against trial counsel on the merits. (Doc. 149, p. 43-44.)

As stated previously with respect to claim 1a, the Court may look past any limitations bar, as well as any procedural default, when an asserted claim has no merit. *See Busby*, 359 F.3d at 720; *Barksdale*, 2009 WL 81124, at *3, n. 4; *Russell*, 2003 WL 21750862, at *3, n. 3; *see also* § 2254(b)(2). The Court therefore reviews these unexhausted claims *de novo* to determine whether they have merit. *Carty v. Thaler*, 583 F.3d 244, 253 (5th Cir.2009) (recognizing that the AEDPA-mandated deference to state-court decisions does not apply when state court did not adjudicate claim on the merits). Based on the following review, the Court concludes that the claims have no merit and that the procedural-bar exception in *Martinez/Trevino* is unavailable because the claims are not "substantial." *See Martinez*, 132 S.Ct. at 1318.

