

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD E. PROCTOR, JR.,	§	
	§	No. 627, 2002
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	Cr. A. Nos. IS98-11-0579W -
STATE OF DELAWARE,	§	0581W & IS98-11-0584W,
	§	0585W.
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9809013934

Submitted: August 4, 2003

Decided: November 12, 2003

Before **BERGER, STEELE** and **JACOBS**, Justices.

ORDER

This 12th day of November 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) On September 8, 2000, the appellant, Ronald E. Proctor, Jr., was sentenced to six years at Level V, followed by work release and probation. Proctor's appeal was dismissed by this Court and remanded to the Superior Court.¹

¹*Proctor v. State*, 2001 WL 823745 (Del. Supr.).

(2) At the remand hearing, Proctor's defense counsel put on the record Proctor's request for the return of a red trailer that had been seized during the course of the police investigation. A week later, Proctor filed a *pro se* motion for return of property in the Superior Court, again requesting return of the red trailer.²

(3) The Superior Court heard Proctor's *pro se* motion for return of property. At the hearing, Proctor conceded that the red trailer had been returned to his agent, but he argued that he was seeking other items, including two gym bags that were allegedly seized by police and documents that were seized by the Department of Correction.

(4) At the conclusion of the hearing, the Superior Court ruled that Proctor's motion for return of property was moot because the red trailer, that was the subject of the motion, had been returned to him through his agent. The Superior Court did not rule on Proctor's request for the return of the other items, finding that Proctor's request lacked clarity and was not fairly presented in the original motion for return of property.

²See Super. Ct. Crim. R. 41(e) (providing that "[a] person aggrieved by the deprivation of property seized by the police may move the court for the return of the property").

(5) On appeal, Proctor argues that the Superior Court deprived him of a fair hearing when the court refused to consider his request for the return of the gym bags and other items that Proctor alluded to at the hearing. Proctor also argues that his defense counsel was ineffective when she failed to file a return of property motion on his behalf and failed to represent him at the return of property hearing.

(6) It is manifest on the face of the opening brief that this appeal is without merit. Assuming that Proctor was entitled to counsel's representation, he has not demonstrated that he was prejudiced by counsel's failure to file a motion on his behalf and to represent him at the hearing.³ The Superior Court found, and the record supports, that Proctor sought, through counsel at the remand hearing and in his *pro se* motion filed a week later, the return of a red trailer. The red trailer was duly returned. The Superior Court did not abuse its discretion when it declined to rule on other unspecified items that were not a part of Proctor's original return of property motion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele

³See *Strickland v. Washington*, 466 U.S. 668 (1984).

Justice