

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§	
	§	No. 259, 2009
Plaintiff Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE and	§	
PERRY PHELPS, Warden,	§	
	§	
Defendants Below,	§	C.A. No. 09C-04-128
Appellees.	§	

Submitted: June 11, 2009
Decided: September 10, 2009

Before **BERGER, JACOBS** and **RIDGLEY**, Justices

ORDER

This 10th day of September 2009, upon consideration of the appellant's opening brief and appendix and the appellees' motion to affirm pursuant to Supreme Court Rule 25(a), to appears to the Court that:

(1) Fifteen years ago, a Superior Court jury convicted the appellant, Frederick W. Smith, Jr., of two counts of Unlawful Sexual Intercourse in the Second Degree, one count of Unlawful Sexual Penetration in the Third Degree, and one count of Assault in the Third Degree. On direct appeal, this Court affirmed Smith's convictions.¹

¹ *Smith v. State*, 669 A.2d 1 (Del. 1995).

(2) Since the affirmance of his convictions in 1995, Smith has sought postconviction relief, state habeas relief, and federal habeas relief, all without success. In 2006, the Court summarily affirmed the Superior Court's denial of Smith's eighth motion for postconviction relief.² After that, by Order dated October 23, 2007, the Court summarily affirmed the Superior Court's denial of Smith's petition for a writ of habeas corpus.³ Most recently, by Order dated March 5, 2009, the Court summarily affirmed the Superior Court's denial of Smith's motion for correction of illegal sentence.⁴ It appears that in all of his various postconviction motions and applications for relief, Smith argued in one way or another without success that there was insufficient evidence to support his convictions of Unlawful Sexual Intercourse in the Second Degree.

(3) In April 2009, Smith filed a civil complaint in the Superior Court against the State of Delaware and the Warden of the Vaughn Correctional Center where Smith is incarcerated. Reiterating claims that he had advanced several times without success in his various postconviction motions and applications (namely that the indictment was based on false and/or insufficient evidence), Smith alleged that the defendants were

² *Smith v. State*, 2006 WL 1650948 (Del. Supr.).

³ *Smith v. State*, 2007 WL 3087390 (Del. Supr.).

⁴ *Smith v. State*, 2009 WL 563521 (Del. Supr.).

unlawfully restraining him in violation of the state and federal Constitutions, and he asked for an award of six million dollars.

(4) The Superior Court reviewed Smith's complaint under the provisions of title 10, section 8803(b) and dismissed the complaint as legally and factually frivolous. This appeal followed. In his opening brief on appeal, Smith contends that the Superior Court "abused its discretion by not allowing [the defendants] to address [Smith's] serious allegations in the complaint."

(5) In the motion to affirm, the appellees maintain that the complaint was properly dismissed as frivolous because Smith is foreclosed by principles of collateral estoppel from raising claims that were previously litigated and determined against him, and he is being held under a valid commitment issued by the Superior Court. The appellees also submit that, with this his twelfth attempt to attack his 1993 Superior Court convictions, Smith has abused the judicial processes of the State and "should be enjoined from filing any further appeals or original jurisdiction applications involving his criminal conviction, without first seeking leave of the Court."

(6) The appellees' positions are well-taken. First, we can discern no error or abuse of discretion on the part of the Superior Court in summarily dismissing Smith's complaint. It is manifest on the face of

Smith's opening brief that his appeal is without merit. The issues presented on appeal are controlled by settled Delaware law, and to the extent that judicial discretion is implicated, there was no abuse of discretion.

(7) Second, the Court having concluded that Smith's excessive and repetitious filings constitute an abuse of the processes of this Court, Smith is hereby enjoined from filing any future claims in this Court concerning his 1993 convictions without first seeking leave of the Court.⁵ Moreover, any future requests by Smith to proceed *in forma pauperis* in any matter before this Court concerning his 1993 convictions must be accompanied by an affidavit containing the certifications required by title 10, section 8803(e).⁶

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁵ Del. Code Ann. tit. 10, § 8803(e) (1999).

⁶ *Id.*