

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§
	§
Defendant Below-	§ No. 542, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 93007368DI
Plaintiff Below-	§
Appellee.	§

Submitted: October 12, 2012

Decided: October 31, 2012

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 31st day of October 2012, upon consideration of the appellant’s opening brief and the State’s motion to dismiss or, in the alternative, to affirm, it appears to the Court that:

(1) The appellant, Frederick Smith, filed this appeal from a decision of the Superior Court, dated September 12, 2012, denying his motion to compel. Smith sought to compel the Department of Justice to correct alleged perjury that occurred in the 1993 proceedings that led to his conviction for multiple sex offenses. The State of Delaware has filed a motion to dismiss or, in the alternative, to affirm.

(2) The issue raised in Smith’s motion to compel is an attack on an alleged inconsistency between the 1993 indictment against him and the testimony presented at his trial. This Court previously has held that, based on his history of excessive litigation, Smith is collaterally estopped from raising this claim.¹ Accordingly, the Superior Court committed no error or abuse in denying Smith’s most recent “motion to compel.”

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹ See *Smith v. State*, 2009 WL 2888258 (Del. Sept. 10, 2009).