

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD E. PROCTOR, JR.,	§	
	§	No. 99 and 100, 2007
Defendant Below-	§	CONSOLIDATED
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware, in
	§	and for Kent and Sussex Counties
STATE OF DELAWARE,	§	Cr. ID Nos. 9802001703
	§	9802002447
Plaintiff Below-	§	9809013934
Appellee.	§	

Submitted: June 21, 2007

Decided: August 2, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 2nd day of August 2007, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Ronald E. Proctor, Jr., filed an appeal from the Superior Court's January 11, 2007 and January 19, 2007 orders finding him in violation of probation. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgments on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In September 2000, Proctor pleaded guilty in Sussex County Superior Court to three counts of Reckless Endangering in the First Degree, one count of Escape in the Third Degree, and one count of Felony Theft. In October 2000, Proctor pleaded guilty in Kent County Superior Court to Felony Receipt of Stolen Property and Possession of Burglar Tools.

(3) In May 2006, Proctor was placed on conditional release.¹ In June 2006, Proctor was arrested on charges of Aggravated Menacing, Terroristic Threatening, Offensive Touching, Endangering the Welfare of a Child, and Misdemeanor Theft. On December 18, 2006, Proctor pleaded guilty to Terroristic Threatening and Endangering the Welfare of a Child and was sentenced on those convictions. At a hearing on January 11, 2007, Proctor was found to have committed a violation of probation (“VOP”) with respect to his earlier Sussex County convictions. On January 19, Proctor was found to have committed a VOP with respect to his earlier Kent County convictions.

(4) On December 22, 2006, following the entry of Proctor’s guilty plea to Terroristic Threatening and Endangering the Welfare of a Child, the Board of Parole released Proctor from conditional release as unimproved. In this appeal, Proctor claims that, for that reason, the Superior Court was

¹ Del. Code Ann. tit. 11, § 4348.

collaterally estopped from finding that he had committed a VOP in January 2007.

(5) Collateral estoppel precludes a party who has litigated one cause of action from relitigating in a second cause of action matters of fact that were, or necessarily must have been, determined in the first action.² A claim will be collaterally estopped only if the same issue was presented in both cases, the issue was litigated and decided in the first case, and the determination was essential to the prior judgment.³ The party asserting collateral estoppel has the burden of showing that the issue whose re-litigation he seeks to foreclose was actually decided in the first proceeding.⁴

(6) Proctor has failed to sustain his burden of proof on his claim of collateral estoppel. The record reflects that the Board of Parole did not decide the factual issue of whether he had committed new offenses in June 2006. As such, the doctrine of collateral estoppel does not apply to the circumstances presented here.

(7) It is manifest on the face of Proctor's opening brief that this appeal is without merit because the issues presented on appeal are controlled

² *Sanders v. Malik*, 711 A.2d 32, 33-34 (Del. 1998).

³ *Id.*

⁴ *Dowling v. United States*, 493 U.S. 342, 350 (1990).

by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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

The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice