

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD E. PROCTOR, JR.,	§
	§
Plaintiff Below-	§ No. 241, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
LAWRENCE SULLIVAN and	§ in and for Kent County
LLOYD SCHMID,	§ C.A. No. 00C-04-019
	§
Defendants Below-	§
Appellees.	§

Submitted: August 30, 2001  
Decided: October 18, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

**ORDER**

This 18<sup>th</sup> day of October 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Ronald E. Proctor, Jr., filed an appeal from the April 24, 2000 order of the Superior Court dismissing his legal malpractice complaint against his public defender as frivolous.<sup>1</sup> We find no merit to the appeal. Accordingly, we AFFIRM.<sup>2</sup>

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<sup>1</sup>10 Del. C. § 8803(b).

<sup>2</sup>We grant Proctor's request to file a non-conforming brief.

(2) In this appeal, Proctor claims that his complaint should not have been dismissed summarily and that a hearing should have been conducted in his criminal case<sup>3</sup> regarding his public defender's "conflict of interest."

(3) Beginning in January 1998, Proctor was represented by the Public Defender's Office in connection with several felony charges. On April 11, 2000, Proctor filed a complaint against his public defender and the public defender's supervisor, alleging legal malpractice. On April 24, 2000, the Superior Court granted Proctor's request to proceed in forma pauperis,<sup>4</sup> but also dismissed the complaint as frivolous, noting that Proctor's criminal case was still pending and that his complaint failed to overcome the qualified immunity accorded to public defenders.<sup>5</sup>

(4) On October 26, 2000, still represented by the same public defender on the same criminal charges, Proctor pleaded guilty to Burglary in the Third Degree, Receiving Stolen Property and Possession of Burglar Tools

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<sup>3</sup>*State v. Proctor*, Del. Super., Cr. A. Nos. 98-02-0667I, 98-02-0522, 98-02-0632I.

<sup>4</sup>10 Del. C. § 8802.

<sup>5</sup>10 Del. C. § 8803; *Browne v. Robb*, Del. Supr., 583 A.2d 949, 952-53 (1990).

and admitted to being an habitual offender.<sup>6</sup> He was sentenced to 3 years at Level V on the burglary conviction, with the sentences on the other two convictions suspended for probation. The transcript of the plea colloquy reflects that the Superior Court judge asked Proctor if he had discussed the plea carefully and fully with his attorney and if he was satisfied that the attorney had done all he reasonably could for him. Proctor answered “yes” to both questions.

(5) The Superior Court was correct in dismissing Proctor’s complaint summarily as frivolous.<sup>7</sup> Because Proctor’s criminal case was still pending, there was no basis for a claim of damages, an essential element of a legal malpractice case. In addition, a public defender is entitled to qualified immunity and Proctor failed to allege facts showing that the public defender’s actions either constituted gross negligence or were motivated by bad faith.<sup>8</sup> Moreover, the entry of Proctor’s guilty plea extinguishes his claim of legal

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<sup>6</sup>Pursuant to Super. Ct. Crim. R. 11(e) (1) (C).

<sup>7</sup>Pursuant to 10 Del. C. § 8803(b), which provides that the complaint “shall be dismissed” upon a finding of frivolousness.

<sup>8</sup>10 Del. C. § 4001.

malpractice.<sup>9</sup> Proctor's contention that his complaint was deficient because he was denied access to the prison law library was asserted for the first time in his reply brief and, therefore, has been waived.<sup>10</sup> The contention is meritless in any case since the complaint is deficient in factual, rather than legal, support for a claim that the public defender's actions constituted gross negligence or were motivated by bad faith.

(6) Proctor also claims that a hearing should have been held in his criminal case to determine whether his legal malpractice complaint against his public defender created a conflict of interest. Because this claim was not presented to the Superior Court in the first instance, we decline to address it in this appeal.<sup>11</sup> The claim is moot as a result of the entry of Proctor's guilty plea in any case.

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

BY THE COURT:

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<sup>9</sup>*Haskins v. Durstein*, Del. Supr., No. 316, 1989, Horsey, J., 1990 WL 209230 (April 11, 1990) (ORDER) (citing *McCord v. Bailey*, 636 F.2d 606 (1980), *cert. denied* 451 U.S. 983 (1981)).

<sup>10</sup>*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993).

<sup>11</sup>Supr. Ct. R. 8.

/s/ E. Norman Veasey  
Chief Justice