Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-061

JUNE TERM, 2007

In re Eugene Ladd	}	APPEALED FROM:
	}	
	}	
	}	Washington Superior Court
	}	
	}	
	}	DOCKET NO. 451-8-06 Wncv
		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Petitioner appeals the superior court's dismissal of his petition for a writ of habeas corpus, arguing that the court erred by dismissing the petition on grounds of res judicata. We affirm.

Petitioner is an inmate serving three to six years after being convicted of several criminal offenses. In April 2005, his furlough status was revoked after a hearing officer found that he had engaged in threatening behavior. In response to petitioner's challenge to the revocation, a second hearing was held to correct procedural errors in the first hearing. Following that hearing, a different hearing officer came to the same conclusion as the first officer. Represented by counsel, petitioner filed an amended habeas petition in which he raised several issues challenging the revocation. Both parties filed motions for summary judgment. In a July 2006 decision, the Chittenden Superior Court granted summary judgment to the Department of Corrections. The court concluded that it need not decide whether revocation of furlough status implicates due process protections under the Vermont Constitution, insofar as petitioner received the constitutionally required procedural due process protections at the revocation hearing. In so ruling, the court addressed, and rejected, each of the six arguments raised by petitioner. Approximately three weeks after the Chittenden Superior Court rendered its decision, petitioner filed another habeas petition challenging the revocation of his furlough, this time in the Washington Superior Court. The latter court dismissed the petition, stating that petitioner was precluded from relitigating the same claims rejected by the Chittenden Superior Court in its summary judgment decision.

On appeal, petitioner argues that the superior court erred in dismissing his habeas petition based on principles of res judicata, and that his previous petition was not adjudicated on the merits because there was no evidentiary hearing. We find no error. Although the doctrine of res judicata had not historically been applied to habeas petitions, both the United States Supreme Court and this Court have held that previously litigated habeas claims could be barred "where (1) the same ground

presented in the subsequent application was determined adversely to the petitioner on the prior application (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application." Woodmansee v. Stoneman, 132 Vt. 107, 108-10 (1974) (citing Sanders v. United States, 373 U.S. 1, 15-19 (1962)).

Although petitioner alleges in his reply brief that his second petition contained facts not included in his first petition, the two petitions are essentially the same, both claiming that the Department revoked his furlough based on insufficient evidence in a hearing in which he was deprived of procedural due process protections guaranteed under the Vermont and federal constitutions. Petitioner's principal argument is that the Chittenden Superior Court's resolution of his first petition was not on the merits because the court granted summary judgment to the Department without holding an evidentiary hearing. We find no merit to his argument. Both parties filed motions for summary judgment. The court carefully considered the merits of each of petitioner's six arguments before granting the State's summary judgment motion. The decision was not based on procedural grounds, as petitioner claims, but rather was based on a substantive review of the issues raised by petitioner. Thus, the matter was plainly determined on the merits. See Downs v. Hoyt, 232 F.3d 1031, 1035 (9th Cir. 2000) (stating that claims disposed of by summary judgment in a previous post-conviction-relief proceeding were adjudicated on the merits); Brooks v. Alameida, 446 F. Supp. 2d 1179, 1183 (S.D. Cal. 2006) (noting that an issue "was finally adjudicated on the merits at the summary judgment stage" of a previous § 1983 action). Finally, petitioner makes no attempt to argue that the "ends of justice" would be served by allowing a different superior court to reexamine essentially the same petition rejected a few weeks earlier by another superior court—and we find no basis for such an argument.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice