

IN THE MATTER OF COMPLAINT
AGAINST THE DIVISION OF
COMMUNITY CORRECTIONS,
DEPARTMENT OF CORRECTIONS,

Case No. 21-013

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board (the “Board”) finds that the complainant, JW,¹ has shown by clear and convincing evidence that the respondent, the Division of Community Corrections (“DCC”), Department of Corrections (“DOC”), violated one of JW’s rights as a crime victim.

COMPLAINT AND ANSWER

2. JW filed a complaint with the Board on December 21, 2021.

3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ) Office of Crime Victim Services, which verified that the substance of the complaint had been presented to DOJ and that DOJ had completed the informal complaint process as to the issues raised in the complaint. Wis. Admin. Code CVRB § 1.05(1), (4).

¹ This final decision uses the victim’s initials to protect the victim’s privacy.

4. Attorney Bronwyn M. Baldwin (“Baldwin”) filed a response on behalf of DOC. The Board had given a copy of the complaint to the respondent and had invited an answer. Wis. Admin. Code CVRB § 1.05(5).

PROBABLE CAUSE DETERMINATION

5. At a meeting on September 27, 2022, the Board found probable cause that DOC violated JW’s right as a crime victim. Wis. Admin. Code CVRB § 1.05(6). The Board notified the parties and DOJ of its conclusions by issuing a written probable cause determination on October 28, 2022. Wis. Admin. Code CVRB § 1.05(8).

VICTIM RIGHT AT ISSUE

6. In order to preserve and protect a victim’s rights to justice and due process throughout the criminal process, a victim shall be entitled to the following right, “which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused . . . [t]o full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.” Wis. Const. art. I, § 9m(2)(m); *see* Wis. Stat. § 950.04(1v)(q) (“Victims of crimes have the following rights . . . [t]o restitution, as provided under . . . [s.] 973.20.”); *see also* Wis. Stat. § 973.20(11)(a) (“the restitution order shall require the defendant to deliver the amount of money or property due as restitution to the department [of corrections]”).

INVESTIGATION SUMMARY

7. The Board directed its operations director to conduct an investigation to obtain records and gather more information. Wis. Admin. Code CVRB § 1.06(1).

8. The operations director obtained records that included court records, incarceration records, DOC records, and other information the Board deemed relevant.

HEARING REQUEST

9. In a letter dated November 11, 2022, Attorney Baldwin, on behalf of DOC, requested an evidentiary hearing, as permitted by Wis. Admin. Code CVRB § 1.07(1). Attorney Baldwin presented five grounds in support of the request for a hearing, arguing that: (1) DOC does not have a constitutional obligation to assist with collecting restitution; (2) it does not have a statutory obligation to assist with collecting restitution from a probationer on community supervision; (3) it does not have authority to proactively collect restitution from an offender's wages or other assets; (4) DOC had complied with its statutory duty under Wis. Stat. § 973.09(3)(b); and (5) it diligently reminded the offender to make payments during his probation toward his restitution owed to JW. Attorney Baldwin included an appendix with the letter.

10. At a meeting on April 12, 2023, the Board found that an evidentiary hearing is unnecessary because there is not a dispute as to a

material fact. Attorney Baldwin's first three grounds concern legal arguments; they do not present any dispute of fact. Attorney Baldwin's fourth ground does not present a dispute of material fact; court records identify whether the defendant's probation was extended and whether the court issued a civil judgment. Attorney Baldwin's fifth ground does address facts relevant for consideration, but such facts are not in dispute. The Board has sufficient information in regard to these facts including the records Attorney Baldwin provided in her appendix. The Board also conducted an investigation that included responses to written questions and obtaining written documentation and records. The Board reviewed the information gathered during the investigation and documentation provided by JW and DOC. The Board has the necessary information to make findings of fact.

FINDINGS OF FACT

11. The Board's evidentiary standard for resolving disputed factual questions is the clear and convincing evidence standard. "Clear and convincing evidence' means evidence which satisfies and convinces the Board, because of its greater weight, that a violation occurred." Wis. Admin. Code CVRB § 1.07(7).

12. The Board finds that JW was the victim of a crime. JW was the victim of a theft, a crime committed by a defendant, Marty L. Monhead

(“Monhead”). Monhead had stolen JW’s bicycle on or about May 24, 2020, in the City of Eau Claire, in Eau Claire County, Wisconsin.

13. The Board finds that the State charged Monhead with misdemeanor theft, as a repeater, for the theft of JW’s bicycle. The State issued a criminal complaint on July 15, 2020, followed by an information on September 23, 2020, in the case of *State v. Monhead*, 20-CF-917 (Wis. Cir. Ct. Eau Claire Cnty.). The complaint and information each included a count for the theft of JW’s bicycle.

14. The Board finds the circuit court convicted Monhead of misdemeanor theft for the theft of JW’s bicycle. Monhead entered a no contest plea to the theft count. The plea took place at a consolidated hearing where Monhead also entered no contest pleas to several counts that included crimes for operating a motor vehicle without owner’s consent, possession with intent to deliver counterfeit methamphetamine, possession of methamphetamine, felony bail jumping, and carrying a concealed weapon. The consolidated plea hearing took place on September 23, 2020.

15. The Board finds that, at the time of the theft, the bicycle had been JW’s only source of transportation. JW spoke at the sentencing hearing, explaining that the theft had left him “scrambling” and caused “a big headache” because his bicycle was his sole source of transportation. Monhead specifically addressed JW during his allocution, apologizing for stealing the

bicycle and recognizing how JW had suffered from the crime. After the crime, JW had to rely on public transportation and a bicycle provided by a family member.

16. The Board finds that the circuit court withheld sentence and placed Monhead on probation to DOC for a period of one year for the misdemeanor count related to the theft of JW's bicycle. The court did not impose jail as a condition of probation and the judgment of conviction noted that Monhead had no days of sentence credit for this misdemeanor count. On some of the other counts, the court withheld sentence and placed Monhead on probation for three years. On the remaining counts, the court assessed only costs. The circuit court entered its sentence on September 23, 2020.

17. The Board finds the circuit court ordered Monhead to pay restitution for the theft of JW's bicycle. The circuit court stated at the sentencing hearing on September 23, 2020, that Monhead had to pay restitution in the amount of \$55.00, the full amount identified for the stolen bicycle. The judgment of conviction, entered the same day on September 23, 2020, included \$55.00 in restitution. Neither the sentencing transcript nor the judgment of conviction identify when the restitution was due. The \$55.00 in restitution was later entered in a standalone order on a DOC-0031 form, signed by the circuit court judge and entered on February 23, 2021.

18. The Board finds that the circuit court, through its judgment of conviction and restitution order, had identified DOC as the agency associated with the restitution condition. The restitution order instructed DOC to disburse payments directly to the victim, JW. The judgment further stated, if JW were in state prison, he was ordered to authorize DOC to collect, from his wages and from other monies held in his inmate account, an amount or percent which DOC determines is reasonable for restitution. The judgment also stated that, if Monhead were later discharged or revoked from probation with an outstanding obligation, a civil judgment would be entered against Monhead in favor of JW and all available enforcement actions would be used to collect the debt.

19. The Board finds that DOC has recognized the importance of restitution and has a process to collect restitution from a probationer for dispersal to a victim. DOC has an offender handbook that identifies restitution as an important condition of supervision. It informs an offender that a probation agent may collect restitution. A publicly available DOC guidance document, related to DCC intake, identifies payment of financial obligations by a probationer as an important part of supervision with restitution payments demonstrating a concern for the victim. The DCC document identifies a process of a probationer paying restitution and a DOC cashier's unit then generating and mailing restitution checks to a victim. The DCC document recognizes that

DOC will not collect supervision fees until after full payment of an active restitution order or conversion of the order to a civil judgment. (DOC Electronic Case Reference Manual, Financial Obligations and Supervision Fees, Sections .03 Supervision Fees and .04 Restitution.)

20. The Board finds that Monhead was placed on probation to DOC. A Division of Community Corrections (“DCC”) Offender Intake Checklist form, identified as DOC-2625, identifies assignment of a probation agent on September 24, 2020. But the first entry in the DCC Notes List Report did not occur until November 13, 2020. The report’s first entry on that date identifies an event date of October 1, 2020, noting the offender had never reported for supervision. There is a second entry, also on that date, identifying an event date of November 11, 2020, that the probation agent had been notified that Monhead was awaiting sentencing in St. Croix County.

21. The Board finds that Monhead started his one-year term of probation confined in jail in St. Croix County. A circuit court in St. Croix County later convicted Monhead on November 13, 2020, for a crime of misdemeanor bail jumping that he had committed earlier on April 26, 2020. Monhead was released from jail in St. Croix County on March 17, 2021.

22. The Board finds that DOC took minimal action supervising Monhead during the period from his probation commencing on September 23, 2020, to the end of his jail term in St. Croix County on March 17, 2021. As

identified above in the DCC Notes List Report, the assigned probation agent had initially noted that Monhead had not reported for supervision, but later clarified that the agent received notification that he was in jail in St. Croix County awaiting sentencing. On November 13, 2020, the agent sent Monhead a request to sign his supervision rules and gave him reporting instructions to report upon his release. Monhead's signature appears on the supervision rules provided by DOC with a date of November 13, 2020. Monhead's rules of supervision on probation included payment of court ordered obligations, as directed by his agent. The next entry in the DCC Notes List Report did not occur until February 19, 2021, when the assigned probation agent noted a call with Monhead that included discussion of the supervision rules and a plan for him to call the agent upon release from jail on March 17, 2021.

23. The Board finds that Monhead had received \$60.00 during the period of his jail confinement in St. Croix County. On December 23, 2020, Monhead received \$10.00 on behalf of the sheriff and county employees with a message for happy holidays. On January 14, 2021, Monhead received a \$50.00 gift card contribution from a family member.

24. The Board finds that Monhead responded to requests and attended meetings with his probation agent during the first six and a half months of probation. As identified above, Monhead had signed his supervision rules on November 13, 2020, and spoken with his agent during a call on February 19,

2021. On March 18, 2021, Monhead called and scheduled an appointment for March 24, 2021. Monhead attended a face-to-face meeting through a video visit with his assigned probation agent on March 24, 2021; they discussed Monhead staying with a family member as he looked for housing, Monhead applying for employment with staffing agencies, and scheduled the next appointment for April 2, 2021. Monhead attended a face-to-face office visit with his assigned probation agent on April 2, 2021; they discussed Monhead having received employment that would start the following week and scheduled the next appointment for April 6, 2021. Monhead attended an office visit with his assigned probation agent on April 6, 2021; they worked on a case plan that included discussion of getting and maintaining employment.

25. The Board finds that Monhead had multiple arrests during the second half of his one-year probation term with each period of noncustodial status having ended as a result of an arrest for crimes committed during the probation term. On May 12, 2021, he committed the crime of possession of methamphetamine, resulting in a felony conviction in Pepin County on October 5, 2021. On June 15, 2021, he committed the crimes of possession of methamphetamine and bail jumping, resulting in felony convictions in Eau Claire County on September 23, 2021. On July 2, 2021, he committed the crime of bail jumping, resulting in a felony conviction in Eau Claire County on

September 23, 2021. On July 17, 2021, he was arrested and later charged in Eau Claire County with the counts dismissed and read into the record.

26. The Board finds that Monhead had failed to report to his probation agent on multiple occasions during the final five and a half months of probation. The assigned probation agent noted that Monhead received instructions on June 17, 2021, to report on June 21, 2021, but he failed to report after his release from jail. On July 6, 2021, the assigned probation agent met with Monhead when he was in jail following his arrest on July 2, 2021. Monhead completed a statement attributing his failure to report because he “didn’t have a phone or . . . paperwork and didn’t know where to go.” He acknowledged in the statement that he had “started using meth and marijuana a few days after . . . release from jail.” In conjunction with Monhead’s release from jail on July 9, 2021, he had an instruction to report to his probation agent on July 12, 2021. Monhead failed to report to his probation agent on July 12, 2021.

27. The Board finds that Monhead was on probation in a noncustodial status for less than 25 percent of his one-year probation term. The first period was 56 days from his release in St. Croix County on March 17 to his confinement in Pepin County on May 12, 2021. The second period was 14 days from his release in Pepin County on June 1 to his confinement in Eau Claire County on June 15, 2021. The third period was 15 days from his release in Eau

Claire County on June 17 to his re-confinement in Eau Claire County on July 2, 2021. The fourth period was eight days from his release on July 9 in Eau Claire County to his re-confinement in Eau Claire County on July 17, 2021.

28. The Board finds that Monhead spent at least 75 percent of his one-year probation term confined in county jails. He spent one day confined in Eau Claire County, from September 23 to 24, 2020. He then spent 174 days confined in St. Croix County from September 24, 2020, to March 17, 2021. He spent another 20 days confined in Pepin County from May 12 to June 1, 2021. He also spent 3 days confined in Eau Claire County from June 15 to 17, 2021. He spent 8 more days confined in Eau Claire County from July 2 to 9, 2021. And he spent 113 days confined in Eau Claire County from July 17 to November 7, 2021.

29. The Board finds that Monhead had negative balances in his jail accounts during his periods of confinement when he was on his one-year probation term. In Eau Claire County, he had a negative balance in his jail account at the start of his probation term and the account remained negative during the subsequent periods of confinement in this county jail. In St. Croix County, Monhead had received the above identified \$10.00 and \$50.00 contributions, but he already had a negative balance before receiving either contribution and his release balance remained in the negative during this

incarceration period. In Pepin County, Monhead never had money in his account; he had a balance of zero dollars with an additional debt obligation.

30. The Board finds that, prior to the end of the one-year probation term, DOC notified the circuit court on the status of Monhead's court ordered financial obligations. On June 1, 2021, the clerk of the circuit court filed a notice stating that Monhead still owed the \$55.00 in restitution, along with additional court related obligations.

31. The Board finds that the circuit court entered a civil judgment for the unpaid restitution and other court related obligations. The circuit court provided notice and entered a judgment on September 20, 2021, in the amount of \$55.00 for the unpaid restitution. The judgment identified Monhead as the debtor and the clerk of courts as the creditor. The circuit court docketed the judgment the same day, on September 20, 2021. The circuit court also entered judgments for the other unpaid court related obligations. The court did not hold a hearing prior to converting the unpaid restitution to a civil judgment.

32. The Board finds that DOC discharged Monhead from probation at the conclusion of the one-year term that ended on September 23, 2021. DOC had started the process to revoke Monhead's probation after his last arrest in July 2021. DOC prepared a draft violation summary in August 2021, recommending revocation for Monhead's conduct in July 2021. But DOC later cancelled an order to detain, effective on August 31, 2021. Monhead remained

in jail through the end of his probation term due, having been held on a significant cash bail. Monhead's probation agent later identified his probation having discharged on September, 23, 2021, while still in custody in jail.

33. The Board finds that none of the unredacted entries that DOC provided in the DCC Notes List Report ever identify any specific discussion between Monhead and his probation agents regarding restitution or a plan to pay the \$55.00 ordered by the circuit court. During the investigation, the Board inquired of DOC whether any of its officials or employees other than Monhead's probations agents had any direct contact or interaction with him regarding the restitution he owed to JW. DOC responded that it had no record of anyone other than Monhead's agents speaking with him about restitution. The Board recognizes that Monhead's probation agents may have had some discussions with him about restitution. For example, a notation from the intake meeting on February 19, 2021, identifies that a probation agent and Monhead had "discussed rules" and, because the rules included payment of court ordered obligations and compliance with court ordered conditions, there may have been some discussion about restitution. But no entry in the DCC Notes List Report that provides synopses of Monhead's probation agents' interactions with him ever specifically references restitution.

34. The Board finds that Monhead still owed \$55.00 in restitution when his probation terminated on September 23, 2021. DOC had identified

that Monhead still owed \$55.00 in restitution when it notified the circuit court of the obligation on June 1, 2021. The circuit court's judgment in the amount of \$55.00, entered on September 20, 2021, demonstrates a continued outstanding restitution balance. On September 28, 2021, DOC provided a notice of case status change, that confirmed the termination of probation on September 23, 2021.

35. The Board finds that DOC had changed Monhead's restitution obligation to zero dollars due in conjunction with the termination of his probation. DOC did so despite having never collected any restitution from Monhead. DOC stated in its request for a hearing that it had "complied with its statutory obligation to passively received payments from Mr. Monhead; however, due to circumstances beyond DOC's control, he made none. As such, there was nothing for DOC to transfer to JW." DOC alleged in its request that it lacked statutory authority to intercept a probationer's tax payments.

36. The Board finds that, although DOC ceased its collection efforts regarding restitution, it actively pursued collection of Monhead's unpaid supervision fees. In a notice of case status change, DOC identified Monhead as owing supervision fees in the amount of \$240.00. DOC has a supervision fee exemption request that it may pursue, known as a DOC-1682, though DOC stated during the investigation that there is no record that it submitted such a request. To the contrary, DOC stated during the investigation that it pursued

collection for the unpaid supervision fees. DOC stated during the investigation that it referred Monhead's unpaid supervision fees to the Tax Refund Interception Program ("TRIP"), a program through the Department of Revenue ("DOR"). DOC stated during the investigation that it sent a letter to TRIP in October 2021 and reminder letters sent annually thereafter. DOC stated during the investigation that it had not received any supervision fees as a result of its referral.

CONCLUSIONS OF LAW

37. The state constitution provides that, "[i]n order to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to . . . rights, which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused" that includes the right "[t]o full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution." Wis. Const. art. I, § 9m(2)(m).

38. The Board concludes that DOC is a public agency subject to the authority of the Board. Wis. Stat. § 950.09(2)(a).

39. Before the Board may find a violation of the right to be provided with assistance collecting restitution, the complainant must show by clear and

convincing evidence under the totality of the evidence that the following four elements were present:

a. JW was a crime victim. *See* Wis. Stat. § 950.09(2) (Board’s authority for a violation of a crime victim right);

b. The circuit court ordered the defendant to pay restitution to JW.² *See* Wis. Const. art. I, § 9m(2)(m) (constitutional right);

c. DOC had authority to assist in the collection of restitution. *See Koschkee v. Taylor*, 2019 WI 76, ¶ 20, 387 Wis. 2d 552, 929 N.W.2d 600 (an agency’s powers, duties, and authority are fixed and circumscribed by the legislature); and

d. DOC did not provide restitution collection assistance. *See* Wis. Const. art. I, § 9m(2)(m) (constitutional right). Restitution collection assistance means providing a victim with assistance collecting restitution throughout the criminal or juvenile justice process until the person has paid the full restitution owed to the victim. *See id.* (constitutional right). In order to preserve and protect a victim’s right to restitution collection, the assistance shall be provided in a manner no

² The Board does not conclude that the right to restitution collection assistance is limited to a circuit court having ordered restitution. The right may extend to an agreement. *See, e.g.* Wis. Stat. §§ 938.245(2)(a)5.; 971.41(3)(b) (restitution in a deferred prosecution agreement or program). Here, the circuit court ordered restitution, so the right to restitution collection assistance under an agreement is beyond the scope of this decision.

less vigorous than the protections afforded to the accused. *See id.* (constitutional right).

40. The burden of proof is on the complainant. This burden of proof is very important and can be the deciding factor in the Board's resolution of factual disputes. Where the evidence on a particular factual question is equally believable or plausible, the effect of the burden of proof is that the Board must find that the complainant failed to prove the point by clear and convincing evidence.

41. The Board concludes that JW was a crime victim, specifically, a victim of theft for Monhead having stolen JW's bicycle on or about May 24, 2020. *See* Wis. Const. art. I, § 9m(1)(a)1.; Wis. Stat. § 950.02(4)(a)1. (victim definitions).

42. The Board concludes that the circuit court ordered Monhead to pay restitution in the amount of \$55.00 to JW. In determining whether to order restitution and the amount thereof, the court had to consider factors that included the amount of loss suffered by JW, the financial resources of Monhead, and the present and future earning ability of Monhead. Wis Stat. § 973.20(13)(a)1.–3. The restitution had to be due no later than the end of the probation period. *See* Wis. Stat. § 973.20(10)(a) (provision for payment within a specified period that cannot extend beyond a probation term).

43. The Board concludes DOC had authority to assist in the collection of restitution. Restitution was a condition of probation. Wis. Stat. § 973.20(1r). The judgment of conviction and restitution order identified DOC as having a role in restitution collection. DOC's own guidance document and its offender handbook recognize its ability to collect restitution from a probationer.

44. The Board concludes that DOC did not provide restitution collection assistance. DOC's probation agents had minimal contact and interaction with Monhead during the first six and a half months of probation. Despite Monhead's periods of incarceration and unemployment, he had access to some funds, such as the \$60.00 he received while confined in jail in St. Croix County. DOC, through its probation agents in DCC, did not vigorously pursue restitution during the term of probation. DOC's failure to provide restitution collection assistance left the full restitution of \$55.00 due at the time of discharge. Further, DOC failed to thoroughly exercise its authority to pursue restitution through other available mechanisms, despite having used such tools to pursue collection of unpaid supervision fees. *See, e.g.*, Wis. Stat. §§ 973.20(10)(a), (b)2. (DOC had authority to certify to DOR the restitution owed 30 days after the probation term expired). The Board concludes that, under the totality of the circumstances, DOC did not provide restitution collection assistance.

45. The Board concludes that the conversion of a restitution order to a civil judgment at the termination of probation is a civil enforcement mechanism. *Huml v. Vlazny*, 2006 WI 87, ¶ 44, 293 Wis. 2d 169, 716 N.W.2d 807. But DOC complying with its statutory duty under Wis. Stat. § 973.09(3)(b) to notify the sentencing court that Monhead still owed the full restitution, by itself, does not provide a victim with restitution collection assistance. To the contrary, it shifted collection from DOC to JW, as exemplified by DOC having zeroed out the restitution balance and leaving JW with the burden of collection with DOC having then shifted its focus to recovering supervision fees.

46. The Board concludes that DOC, through its DCC, violated JW's right as a crime victim to be provided with assistance collecting restitution. *See* Wis. Const. art. I, § 9m(2)(m) (constitutional right).

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has shown by clear and convincing evidence that the respondent violated the complaint's rights as a crime victim;
2. That the Board declines to issue a sanction or civil action against DOC. *See* Wis. Stat. § 950.09(2) (sanctions and civil action);
3. That, in lieu of sanction, civil action, or other remedy, the Board may issue a report and recommendation concerning the securing and provision of the crime victims right to be provided with assistance collecting restitution. Wis. Stat. § 950.09(3);
4. That this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board;
5. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See* Wis. Admin. Code CVRB § 1.10; and
6. That a copy of this final decision shall be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the “Service List” below.

Dated this 18th day of May 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

JW

[address withheld]

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