

IN THE MATTER OF A COMPLAINT
AGAINST THE MARATHON COUNTY
DISTRICT ATTORNEY

Case No. 233-003

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board reviewed a complaint filed by complainant RM¹ against the respondent Marathon County District Attorney (MCDA). The Board evaluated the complaint to determine whether it stated probable cause that the MCDA violated RM's rights as a crime victim. *See* Wis. Const. art. I, § 9m; Wis. Stat. § 950.04(1v). The Board finds no probable cause.

BOARD PROCEDURE

2. RM filed a complaint with the Board dated February 15, 2023.

3. Upon receipt of this complaint, the Board contacted the Department of Justice Office of Crime Victim Services Victim Resource Center (VRC), which verified that the substance of the complaint had been presented to the VRC and that the VRC had completed its action under Wis. Stat. § 950.08(3). *See* Wis. Admin. Code CVRB § 1.05(1), (4).

¹ The Board uses initials to protect RM's privacy.

4. The Board gave a copy of the complaint to the MCDA. The Board invited the MCDA to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. District Attorney Theresa Wetzsteon filed a response on behalf of the MCDA.

5. The Board made this probable-cause determination at a meeting on May 17, 2023.

6. When making its probable-cause determination, the Board considered all relevant information, including the complaint and the response. *See Wis. Admin. Code CVRB § 1.05(7)(a)–(c)*.

7. The Board notifies the parties and the VRC of its conclusions through the issuance of this probable-cause determination. *See Wis. Admin. Code CVRB § 1.05(8)*.

STATEMENT OF THE CASE

I. RM alleges the following facts.

8. RM received letters from the Wausau Police Department (WPD) and the MCDA.

9. Dated September 22, 2022, the letter from the WPD advised RM that a police report had been prepared regarding RM's complaint that an acquaintance of his, MV,² had stolen some of RM's property. But because there

² The Board uses initials to protect this person's privacy.

was insufficient proof to support all the elements of a misdemeanor theft charge, the WPD informed RM that it would not be referring this case to the MCDA for charges. The WPD did, however, indicate that it had investigated RM's complaint about MV sharing nude photos of him, and that this investigation resulted in the WPD referring this case to the MCDA for charges.

10. Dated November 9, 2022, the MCDA's letter to RM notified him that there was insufficient evidence to prosecute MV for allegedly sharing nude photos of RM. It also advised RM that he may have the option to file a civil suit regarding these allegations.

11. RM alleged he contacted victim services but did not receive a reply.

12. RM alleged that the MCDA has filed meritless charges against RM and others.

13. RM alleged that the MCDA refused to recognize RM as a victim.

14. RM alleged he reached out to the MCDA for counseling services but did not receive an answer.

15. RM alleges that he suffers from post-traumatic stress disorder.

II. The MCDA states the following in its response.

16. The MCDA took no action on RM's allegations that MV stole his property because the WPD did not refer that case to the MCDA for charges.

17. On September 8, 2022, the MCDA received a charging referral from the WPD for “Capture Intimate Representation without Consent” regarding RM’s allegations that MV had shared nude photos of him.

18. On November 9, 2022, after a review of the referral, the MCDA decided not to prosecute the nude-photos case and closed the case.

19. RM received a notification of the MCDA’s decision not to prosecute in a letter dated November 9, 2022.

20. The MCDA reports that RM responded to the MCDA’s letter in a letter dated November 16, 2022, and that RM requested information in that letter.

21. The MCDA reports that the next day, Victim Witness Coordinator Pam Steffen-Karls provided a written response to RM’s letter with the information he requested.

22. The MCDA explained it does not have any record of RM requesting counseling services from the MCDA prior to November 16, 2022.

23. The MCDA also stated in its response to the Board that RM is not a statutory victim entitled to services because the MCDA declined to prosecute the nude-photos case.

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

24. RM’s complaint implicates two rights of crime victims.

25. **Right to a timely disposition.** A crime victim has the right to a “timely disposition of the case, free from unreasonable delay.” Wis. Const. art. I, § 9m(2)(d); *see also* Wis. Stat. § 950.04(1v)(k) (providing a crime victim the right to “a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter”).

26. **Right to written information.** After a defendant is charged, a crime victim has the right to written information from the prosecuting district attorney. Wis. Stat. § 950.08(2r). This information includes a “brief statement of the procedure for prosecuting a crime” and a list of crime-victim rights. *Id.*

LEGAL STANDARDS

27. The Board employs a multi-step methodology to analyze the complaint. It asks: (1) whether the complainant was a crime victim; (2) whether the respondent is subject to the authority of the Board; (3) whether the allegations occurred outside the three-year limitations period; (4) whether the allegations implicate any constitutional or statutory crime-victim rights; and (5) whether there is probable cause to believe that the respondent violated one or more of these rights.

28. Whether a person is a crime victim is determined by statute. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12. A crime victim is a

“person against whom a crime has been committed.” Wis. Stat. § 950.02(4)(a)1; *see also* Wis. Const. art. I, § 9m(1)(a).

29. Whether a respondent is subject to the Board’s authority is also determined by statute. The Board has authority to review complaints about “public officials, employees or agencies that violate the rights of crime victims.” Wis. Stat. § 950.09(2)(a). *But see Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, ¶ 36, 376 Wis. 2d 147, 897 N.W.2d 384 (holding statute unconstitutional as applied to judges).

30. Whether the allegations occurred outside the three-year limitations period is determined by the filing requirements in the administrative code. The Board may not consider allegations relating to “conduct that occurred . . . more than 3 years before a complaint was filed with the [B]oard or the [B]oard was otherwise notified of the conduct,” except that the Board may consider issuing a report and recommendation concerning such conduct. Wis. Admin. Code CVRB § 1.04(5).

31. Probable cause is “a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.” Wis. Admin. Code CVRB § 1.02(9). Probable cause is satisfied by a believable or plausible account that the respondent probably

has violated or is violating the victim's rights. *See State v. Sorenson*, 143 Wis. 2d 226, 251, 421 N.W.2d 77 (1988).

32. At the probable-cause stage, the Board evaluates the limited information available to it in the light most favorable to the complainant. The probable-cause determination is not the proper time to debate and resolve credibility issues if essential facts, circumstances, and reasonable inferences are strong enough to warrant a prudent person to believe a violation probably has occurred or is occurring. *See State ex rel. Huser v. Rasmussen*, 84 Wis. 2d 600, 614, 267 N.W.2d 285 (1978).

PROBABLE CAUSE DETERMINATION

33. The Board finds no probable cause that the MCDA violated RM's rights.

34. The Board reaches this conclusion after applying the relevant legal standards to the facts.

35. The Board finds that RM is a crime victim because he alleges that MV stole RM's property and shared nude photos of him, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See Wis. Stat. §§ 939.12, 950.02(1m), (4)*. Contrary to what the MCDA suggests in its response, victim status is not dependent upon the charging decision of a prosecutor.

36. The Board finds that the MCDA is a public agency subject to the authority of the Board. *See Wis. Stat. § 950.09(2)(a)*.

37. The Board finds that none of the allegations in the complaint occurred outside the three-year limitations period. *See* Wis. Admin. Code CVRB § 1.04(5).

38. The Board finds that RM's complaint implicates the right to a timely disposition. Wis. Const. art. I, § 9m(2)(d); *see also* Wis. Stat. § 950.04(1v)(k). It also implicates the right to written information. Wis. Stat. § 950.08(2r).

39. The final question is whether there is probable cause to believe the MCDA violated these rights.

40. **Right to a timely disposition.** The MCDA received the referral from the WPD on September 8, 2022, regarding RM's allegation that MV shared nude photos of him. The MCDA made its charging decision on November 9, 2022. The MCDA sent a letter informing RM of its charging decision that same day. When analyzing an allegation involving the right to speedy disposition, the Board first identifies any delays, whether identified delays were unreasonable, and if so, whether unreasonable delays are attributable to the respondent. In reviewing the timeline, the Board did not identify any unreasonable delays. Therefore, there is not probable cause to believe the MCDA violated RM's right to a timely disposition.

41. **Right to written information.** RM states that he contacted the MCDA to request counseling services to cope with his post-traumatic stress

disorder. Although victim-witness staff within a district attorney's office routinely assist victims with a wide range of needs, including making appropriate counseling referrals, this service is not a legal right. While a crime victim in a charged case has a right to receive specific written information from a district attorney, this right does not obligate a district attorney to provide counseling-services information or referrals. Therefore, there is not probable cause to believe the MCDA violated any right with regard to RM's request for counseling services.

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That there is no probable cause that a victim rights violation occurred therefore the complaint is dismissed. A finding of no probable cause is a final decision of the Board under Wis. Admin. Code CVRB § 1.05(8).

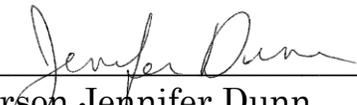
2. That the Board hereby provides notice to the parties of the right to seek judicial review of this final decision pursuant to Wis. Stat. § 227.52.

Attached to this decision is a summary of appeal rights.

3. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–227.59. *See* Wis. Admin. Code CVRB § 1.10.

4. That a copy of this probable-cause determination will 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 10th day of July 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

RM

[street address withheld]

District Attorney Theresa Wetzsteon
Marathon County District Attorney's Office
500 Forest Street
Wausau, WI 54403
Delivered via email: Theresa.Wetzsteon@da.wi.gov

Victim Rights Specialist
Office of Crime Victim Services
Post Office Box 7951
Madison, WI 53707-7951
Delivered via email: kessenicham@doj.state.wi.us

Julie Braun
Wisconsin Department of Justice
17 West Main Street, 8th Floor
Madison, WI 53703