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SUMMARY
October 26, 2023

2023COA100

No. 22CA2021, *Puerta v. Newman* — Remedies — Damages — Civil Action for Deprivation of Rights — Peace Officers; Courts and Court Procedures — Jurisdiction of Courts — Standing

A division of the court of appeals considers whether a crime victim may assert claims against peace officers for violation of the victim's civil rights premised on the officers' failure to timely process evidence that would allegedly have resulted in the conviction of the victim's assailant for a specific offense. The plaintiff alleged that he was entitled to a civil remedy under section 13-21-131(1), C.R.S. 2023, because the officers violated his constitutional rights to due process and to be heard at all critical stages of the prosecution of his assailant.

The division concludes that the plaintiff failed to articulate a cognizable property interest in support of his due process claim.

The division similarly determines that the plaintiff lacks standing to sue for a violation of his right to be heard at all critical stages of the prosecution of his assailant for a specific offense. Accordingly, the division affirms the district court's dismissal of the plaintiff's claims.

Court of Appeals No. 22CA2021
Huerfano County District Court No. 22CV30002
Honorable M. Jon Kolomitz, Judge

Brian Puerta,

Plaintiff-Appellant,

v.

Bruce Newman, Sheriff; Milan Rapo, Undersheriff; Craig Lessar, Captain; and
Roman Hajar, Deputy,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE LIPINSKY
Welling and Gomez, JJ., concur

Announced October 26, 2023

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Appellant

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Defendants-Appellees

¶ 1 Colorado law recognizes a cause of action against peace officers for violation of a plaintiff’s civil rights. *Ditirro v. Sando*, 2022 COA 94, ¶ 1, 520 P.3d 1203, 1205. Section 13-21-131(1), C.R.S. 2023, “allows a plaintiff to sue a peace officer who, ‘under color of law, subject[ed] or caus[ed] [the plaintiff] to be subjected, including failing to intervene,’ to the deprivation of an individual right that ‘create[s] binding obligations on government actors secured by the bill of rights’ embodied in the Colorado Constitution.” *Ditirro*, ¶ 1, 520 P.3d at 1205 (quoting § 13-21-131(1)).

¶ 2 Therefore, in assessing whether a plaintiff pleaded an actionable claim under section 13-21-131(1), a court must determine whether the plaintiff’s case rests on a violation of a right embodied in the bill of rights of the Colorado Constitution that can give rise to a private right of action.

¶ 3 In this case, we consider for the first time whether section 13-21-131(1) claims can arise from the failure of law enforcement officers to timely process evidence that would allegedly have resulted in a criminal defendant’s conviction for a specific offense. Plaintiff, Brian Puerta, contends that the individual who shot him

was not prosecuted for attempted murder because the defendants, Sheriff Bruce Newman, Undersheriff Milan Rapo, Captain Craig Lessar, and Deputy Roman Hijar of the Huerfano County Sheriff's Office, failed to timely process evidence relating to the shooting. According to Puerta, the defendants' inaction violated his "fundamental rights" to see the shooter prosecuted for "attempting to murder him" and to speak at the shooter's sentencing for attempted murder.

¶ 4 Puerta appeals the district court's dismissal of his claims against the defendants for failure to state a claim upon which relief can be granted under C.R.C.P. 12(b)(5). We affirm.

I. Background Facts and Procedural History

¶ 5 Puerta alleged the following facts in his amended complaint.

¶ 6 John Wilson shot Puerta. Puerta called the police and described his assailant, the gun the assailant used, and the car the assailant drove. Puerta was permanently injured as a result of the shooting.

¶ 7 Law enforcement officers arrested Wilson. During the arrest, the officers seized a gun and a car that matched the descriptions Puerta had provided. Puerta later identified Wilson as his assailant.

¶ 8 Wilson was charged with, as relevant to this appeal, attempted murder. The prosecutor named Puerta as the victim. More than four months later, the prosecutor reminded Undersheriff Rapo, Captain Lessar, and Deputy Hajar to timely process the gun, the recovered bullets, and other evidence of the shooting (the evidence). Undersheriff Rapo, Captain Lessar, and Deputy Hajar did not submit the evidence to the Colorado Bureau of Investigation (the CBI) for examination, however, until four days before the deadline for disclosures to the defense.

¶ 9 Because the CBI had insufficient time to examine the evidence before the disclosure deadline, the prosecutor concluded that the evidence could not be introduced at Wilson's trial for attempted murder. As a result, the district attorney informed Puerta that the admissible evidence relating to the shooting would support a menacing charge, but not a charge for attempted murder, against Wilson.

¶ 10 Wilson subsequently pleaded guilty to vehicular eluding and was sentenced to three years in the custody of the Department of Corrections. Puerta had the opportunity to speak at Wilson's sentencing hearing.

¶ 11 In his complaint, Puerta alleged that the defendants violated his constitutional rights under article II, sections 16a and 25 of the Colorado Constitution by failing to timely process the evidence in the case against Wilson. He specifically asserted that, because the prosecutor was unable to pursue the attempted murder charge against Wilson due to the defendants' untimely processing of the evidence, Puerta was deprived of his rights (1) to due process under section 25 (the due process claim) and (2) to be heard at all critical stages of Wilson's prosecution for attempted murder under section 16a (the right to be heard claim). He pleaded that, under section 13-21-131(1), he was entitled to a civil remedy for these violations.

¶ 12 The defendants filed a motion to dismiss under C.R.C.P. 12(b)(5), which the district court granted.

II. Analysis

¶ 13 Puerta contends that the district court erred by dismissing his claims. He requests that, in addition to reversing the district court's judgment, we direct the district court to award him reasonable attorney fees and costs as a "prevailing party" under section 13-21-131(3). We affirm the district court's judgment and deny Puerta's request for attorney fees and costs.

A. Standard of Review

¶ 14 “We review de novo a trial court’s ruling on a motion to dismiss.” *Patterson v. James*, 2018 COA 173, ¶ 16, 454 P.3d 345, 350. “We apply the same standards as the trial court, accepting all of the factual allegations in the complaint as true and viewing those allegations in the light most favorable to the plaintiff.” *Id.* “To survive summary dismissal for failure to state a claim under Rule 12(b)(5), a party must plead sufficient facts that, if taken as true, suggest plausible grounds to support a claim for relief.” *Id.* at ¶ 23, 454 P.3d at 351.

B. The Due Process Claim

¶ 15 Puerta argues that, by not timely processing the evidence, the defendants deprived him of his “fundamental right to see that Mr. Wilson was prosecuted for attempting to murder” him. Puerta styles the right as substantive, claiming that he had a legitimate entitlement to expect the defendants to fulfill their ministerial duty to process the evidence in time to allow the district attorney’s office to prosecute Wilson for attempted murder. He concedes, however, that he was not entitled “to compel a different result of the prosecution against Mr. Wilson.”

1. Applicable Law

¶ 16 Colorado’s due process clause protects against the “depriv[ation] of life, liberty or property, without due process of law.” Colo. Const. art. II, § 25. Puerta does not contend that the defendants deprived him of a life or liberty interest. “Property interests are not created by the Constitution, but rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.” *Wilkerson v. State*, 830 P.2d 1121, 1123-24 (Colo. App. 1992).

¶ 17 “To have a property interest in a benefit, a person must have more than an abstract need or desire for it and must have more than a unilateral expectation of it. Instead, he must have a legitimate claim of entitlement to it.” *Id.* at 1124. “Thus, in alleging a deprivation of due process, [a] plaintiff must first demonstrate the existence of the property interest which enables him to assert the constitutional claim and the basis of his entitlement to it.” *Id.*; see also *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005).

2. The District Court Properly Dismissed the Due Process Claim

¶ 18 We agree with the district court that Puerta failed to allege a constitutionally protected interest in support of the due process claim.

¶ 19 The only sources of the alleged protected property interest to which Puerta directs us are (1) the legislative declaration in the Victim Rights Act (the Act), §§ 24-4.1-300.1 to -305, C.R.S. 2023, which appears at section 24-4.1-301, C.R.S. 2023; and (2) a prosecutor's alleged ability to compel a sheriff's office to process evidence under Crim. P. 16.

¶ 20 We first consider the Act, in which the General Assembly codified certain constitutional principles that grant rights to crime victims. *See Gansz v. People*, 888 P.2d 256, 257 (Colo. 1995) (explaining that the Act is the enabling legislation for article II, section 16a of the Colorado Constitution). Puerta does not cite, nor are we aware of, any authority expressly holding that any provision of the Act grants him the right to compel the Huerfano County Sheriff's Office to process the evidence. Thus, it is unclear how the

language of the Act establishes the due process right that Puerta alleges.

¶ 21 For example, although the General Assembly declared in the legislative declaration for the Act that “all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded criminal defendants,” § 24-4.1-301, such declaration does not grant crime victims the right to compel a sheriff’s office to process evidence. And while section 24-4.1-301 equates a crime victim’s rights with those afforded to defendants, Puerta does not allege that defendants in criminal prosecutions have the right to compel a sheriff’s office to process evidence.

¶ 22 Similarly, Puerta does not explain which provision in Crim. P. 16 creates his alleged property interest. We perceive the most analogous provision of the rule to be Crim. P. 16, Part I(b)(4), which states that “[t]he prosecuting attorney shall ensure that a flow of information is maintained between the various investigative personnel and his or her office sufficient to place within his or her possession or control all material and information relevant to the accused and the offense charged.” But this language does not grant

a crime victim any authority to compel law enforcement officers to process evidence. Indeed, that provision, as well as the remainder of Crim. P. 16, does not even reference crime victims. *See Town of Castle Rock*, 545 U.S. at 763 (explaining that a plaintiff is not “‘entitled’ to something when the identity of the alleged entitlement is vague”).

¶ 23 Moreover, we do not see any indication in either section 24-4.1-301 or Crim. P. 16 that Puerta is entitled to recover monetary damages under section 13-21-131(1) for the defendants’ failure to timely process the evidence. *See Town of Castle Rock*, 545 U.S. at 765 (“If [plaintiff] was given a statutory entitlement, we would expect to see some indication of that in the statute itself.”). On the contrary, the Act provides only an administrative remedy for an affected person who seeks to enforce the Act. *See* § 24-4.1-303(17), C.R.S. 2023. Under section 24-4.1-303(17), the Attorney General — not a crime victim — has standing to “enforce compliance” with the Act. “A person . . . shall not be entitled to claim or to receive any damages or other financial redress for any failure to comply with” the Act. *Id.*

¶ 24 The Supreme Court’s reasoning in *Town of Castle*

Rock highlights the deficiencies in the due process claim. Even if we were to conclude that Puerta is entitled to compel the Huerfano County Sheriff’s Office to process the evidence, it does not follow that Puerta has a protected property interest under the due process clause to so compel the Sheriff’s Office. “Such a right would not, of course, resemble any traditional conception of property.” *Town of Castle Rock*, 545 U.S. at 766. “Although that alone does not disqualify it from due process protection, as [prior cases] show, the [alleged right] does not ‘have some ascertainable monetary value,’ as even our [analogous] cases have implicitly required.” *Id.* (quoting Thomas W. Merrill, *The Landscape of Constitutional Property*, 86 Va. L. Rev. 885, 964 (2000)). “Perhaps most radically, the alleged property interest here arises *incidentally*, not out of some new species of government benefit or service, but out of a function that government actors have always performed” *Id.* at 766-67. “[A]n indirect and incidental result of the [government’s performance of that function] . . . does not amount to a deprivation of any interest in life, liberty, or property.” *Id.* at 767 (quoting *O’Bannon v. Town Ct. Nursing Ctr.*, 447 U.S. 773, 787 (1980)).

¶ 25 At oral argument, counsel for Puerta characterized the alleged property interest as Puerta’s “indignation that he did not get his day in court” and said that an award of damages would provide Puerta with a “feeling of satisfaction that the criminal process worked for him.” But Puerta does not cite, and we are not aware of, any case from any United States jurisdiction holding that such “indignation” and desire for a “sense of satisfaction” constitute a property interest protected under the Due Process Clause of the United States Constitution or that of any state constitution. Indeed, the limited case law considering whether a crime victim has a property interest in law enforcement officers’ performance of their duties weighs against Puerta’s position. Such a claim would take the courts beyond “any . . . recognized theory of Fourteenth Amendment due process, by collapsing the distinction between property protected and the process that protects it, and would federalize every mandatory state-law direction to executive officers whose performance on the job can be vitally significant to individuals affected.” *Town of Castle Rock*, 545 U.S. at 772. Moreover,

the benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under

the Due Process Clause, neither in its procedural nor in its “substantive” manifestations. This result reflects our continuing reluctance to treat the Fourteenth Amendment as “a font of tort law.”

Id. at 768 (quoting *Parratt v. Taylor*, 451 U.S. 527, 544 (1981)).

¶ 26 Finally, the due process claim fails because Puerta impermissibly seeks a specific remedy through that claim: monetary damages for the defendants’ failure to timely process the evidence so that Puerta could have appeared at Wilson’s sentencing for attempted murder. But the due process clause “is applicable to rights, not remedies.” *State v. DeFoor*, 824 P.2d 783, 792 (Colo. 1992) (quoting *White v. Ainsworth*, 62 Colo. 513, 522, 163 P. 959, 962 (1917)). Because Puerta does not have a due process right to a particular remedy, he “failed to articulate a cognizable property interest in support of [his] due process claim.” *Id.*

¶ 27 In sum, we hold that neither the Act nor Crim. P. 16 grants Puerta a property right that can support a claim under section 13-21-131(1). Accordingly, we affirm the district court’s dismissal of the due process claim because Puerta did not premise the claim on a constitutionally protected interest.

C. The Right to Be Heard Claim

¶ 28 Puerta additionally argues that, although he had the opportunity to be heard at Wilson’s sentencing for the vehicular eluding conviction, he was the victim of an attempted murder and, therefore, had the right to speak at Wilson’s sentencing for that offense. Thus, according to Puerta, the defendants deprived him of his constitutional right to be heard at all critical stages of an attempted murder proceeding against Wilson.

1. Applicable Law

¶ 29 “Any person who is a victim of a criminal act . . . shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process.” Colo. Const. art. II, § 16a.

2. The District Court Properly Dismissed the Right to Be Heard Claim

¶ 30 We agree with the district court that Puerta lacked standing to assert the right to be heard claim.

¶ 31 The district court concluded that Puerta did not allege that he had been denied the opportunity to be heard at Wilson’s sentencing. Rather, Puerta asserted that he had been denied the right to appear

at Wilson’s sentencing for a specific offense. Puerta’s assertion fails because a crime victim does not have the right to be heard at a defendant’s sentencing for a specific offense of the victim’s choosing.

¶ 32 “[A] victim is not a party and has no standing beyond the rights specifically granted by statute and the Colorado Constitution.” *People v. Chavez*, 2016 CO 20, ¶ 9 n.2, 368 P.3d 943, 944 n.2. Article II, section 16a of the Colorado Constitution does not define the “critical stages” at which a victim has the right to be heard, nor does it explain whether those stages are case specific or offense specific. But section 24-4.1-302.5(1)(d), C.R.S. 2023, lists the proceedings in which the victim has a right to be heard. Those proceedings do not describe specific offenses; rather, they are transactional and specific to the type of proceeding. Where the statute is offense specific, it grants victims of crimes specific rights. *See, e.g.*, § 24-4.1-302.5(1)(b.7) (providing that a victim of a sex offense has “the right to be informed of the filing of any petition or motion filed to terminate sex offender registration”). Thus, under the plain language of section 24-4.1-302.5(1)(d), a crime victim has the right to be heard at certain proceedings in the case against his

or her assailant but not the right to dictate the assailant's prosecution for a specific offense.

¶ 33 The statutory language aligns with the case law holding that “a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973); *see also Gansz*, 888 P.2d at 258-59 (“Article II, section 16a of the Colorado Constitution does not grant an alleged crime victim standing or the right to contest a district attorney’s decision to dismiss criminal charges or the right to appellate review of the order dismissing the charges.”). It follows that, if a crime victim does not have standing to contest the prosecutor’s charging decisions, the victim likewise does not have the right to be heard at his or her assailant’s sentencing for a specific offense that the prosecutor did not pursue. Accordingly, we conclude that the district court properly dismissed Puerta’s right to be heard claim.

¶ 34 Given our conclusion that the district court properly dismissed Puerta’s claims, we need not reach the district court’s alternative determination that Puerta’s claims are barred as contrary to public

policy, and we decline Puerta's request to award him attorney fees and costs under section 13-21-131(3).

III. Disposition

¶ 35 The judgment is affirmed.

JUDGE WELLING and JUDGE GOMEZ concur.