

APR - 5 2017

In the Matter of the John Doe petition
of Peg Swan

DANE COUNTY CIRCUIT COURT 17-JD-7

DECISION AND ORDER DISMISSING JOHN DOE PETITION

This is a John Doe petition filed by Petitioner Peg Swan, on behalf of twenty-two inmates at Stanley Correctional Institution, Redgranite Correctional Institution, Green Bay Correctional Institution and Fox Lake Correctional Institution. The petition alleges that Jim Schwochert, Cathy Jess, Marquis Corp., Brad Hompe, Cindy O'Donnell and other unidentified defendants committed crimes of theft, misconduct in public office, simulating legal process, and violations of the Wisconsin Organized Crime Control Act. For the following reasons, the complaint will not be referred to the district attorney and the petition is **DISMISSED**.

Wis. Stats. § 968.26 governs John Doe proceedings in Wisconsin. Wis. Stat. § 968.26(2)(am) provides:

If a person who is not a district attorney complains to a judge that he or she has reason to believe that a crime has been committed within the judge's jurisdiction, the judge shall refer the complaint to the district attorney or, if the complaint may relate to the conduct of the district attorney, to another prosecutor under s. 978.045.

“Wisconsin's John Doe proceeding, codified in Wis. Stat. § 968.26, serves two important purposes.” *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶ 83, 363 Wis. 2d 1, 67-68, 866 N.W.2d 165, 197 (citation omitted). “First, and most obvious, a John Doe proceeding is intended as an investigatory tool used to ascertain whether a crime has been committed and if so, by whom. Second, the John Doe proceeding is designed to protect innocent citizens from frivolous and groundless prosecutions.” *Id.* (citations omitted).

The Wisconsin Court of appeals has interpreted the language of Wis. Stat. § 968.26(2)(am) to require a judge to refer a John Doe complaint to the district attorney “only if the four corners of the complaint provide a sufficient factual basis to establish an objective reason to believe that a crime has been committed in the judge’s jurisdiction.” *Naseer v. Miller*, 2010 WI App 142, ¶ 11, 329 Wis. 2d 724, 793 N.W.2d 209. Rather,

[A] John Doe judge must potentially undertake four inquiries: (1) decide whether to refer the John Doe complaint to the district attorney in the first instance; (2) decide whether it is necessary to conduct any additional proceedings if the district attorney chooses not to issue charges; (3) determine what, if any, witnesses to subpoena and examine if additional proceedings are deemed necessary; and (4) decide whether to issue a criminal complaint if the judge finds that the additional proceedings have produced sufficient credible evidence to warrant prosecution.

Id., ¶ 7.

This decision focuses on the first step, whether the petition must be referred to the district attorney. In the petition, Swan complains that the Wisconsin Department of Corrections (“DOC”) erroneously deducted various debts and obligations from a number of inmates’ prison trust fund accounts.

Swan has not alleged facts to demonstrate that the named defendants committed any criminal offense. As the court understands, the only conduct attributed to defendant Schwochert is his allegedly improper application of the provisions of 2015 Act 355 that resulted in the purported erroneous deductions. The conduct attributed to defendant O’Donnell is her dismissal of inmate Nate Lindell’s group complaint. Moreover, the conduct attributed to defendant, Marquis Corp., a third-party bill collecting company, is its “search[es] for debts prisoners may owe and [deductions of those debts from] prisoners’ funds to pay those debts.” Pet. at 2. There is nothing criminal about these alleged conducts.

Furthermore, there is no other conduct attributed to the named defendants, or in fact any individuals. Swan only attributes wrongful deductions to the DOC.

The crux of the complaint seems to be the retroactive application of the provisions of 2015 Act 355. However, a John Doe action is not the proper action to challenge the application of such laws. If any inmate is unsatisfied with the DOC's interpretation of 2015 Act 355, he or she may choose to pursue their administrative remedies, and ultimately a writ of certiorari.

Therefore, an examination of the four corners of the petition shows an insufficient factual basis to establish an objective reason to believe that a crime has been committed in the court's jurisdiction.

For the above-stated reasons, Swan's petition to conduct a John Doe proceeding is **DENIED**, and the case is **DISMISSED**.

IT IS SO ORDERED.

Dated: April 5, 2017

By the Court:



Frank D. Remington
Circuit Court Judge

cc: Peg Swan