STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0951

State of Minnesota,
Respondent,

vs.

Joseph Sean Anthony Porter,
Appellant.

Filed June 16, 2025
Affirmed
Bratvold, Judge

Chisago County District Court
File No. 13-CR-23-526

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Janet Reiter, Chisago County Attorney, Thomas A. Gehrz, Assistant County Attorney, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Evan A. Ottaviani, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Cleary, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from a final judgment of conviction for threats of violence, appellant argues that the district court abused its discretion by denying his motion to disqualify the assistant county attorney (prosecuting attorney) and his employer, the "Chisago County Attorney's Office" (county attorney's office), based on an alleged conflict of interest. Because the prosecuting attorney and the county attorney's office did not have a conflict of interest, we conclude that the district court did not abuse its discretion and affirm.

FACTS

On June 15, 2023, respondent State of Minnesota charged appellant Joseph Sean Anthony Porter with threats of violence under Minn. Stat. § 609.713, subd. 1 (2022), alleging that, on February 8, 2023, Porter, who was an inmate at a correctional facility, sent a letter threatening to kill a district court judge seated in Center City, Chisago County. The complaint's probable-cause statement attested that, when asked by law enforcement, Porter admitted he wrote the letter and mailed it to the judge. Porter added that the judge presided over criminal proceedings against him and that he did not "intend to go through with it" but wanted to be in prison "for as long as he could."

The Chief Justice of the Minnesota Supreme Court appointed a judge from the Second Judicial District "to serve and discharge the duties of Judge of the District Court of the Tenth Judicial District at Center City in Chisago County" for the state's case against Porter. The county attorney's office retained the matter for prosecution. The district court

issued a scheduling order stating that the deadline for all motions, including motions in limine, was November 9, 2023, and that a jury trial would commence on January 23, 2024.

At a pretrial hearing on November 9, 2023, the district court asked about the status of the case, stating that it had received no motions from either side. Porter, who was represented by counsel throughout these proceedings, stated that he wanted to discuss a "fairly concerning conflict of interest" involving the prosecuting attorney. Porter asserted that his concern stemmed, in part, from the state's initial plea offer, which was "poor," and the fact that the prosecuting attorney "appears in front of" the judge who received Porter's letter "on a regular basis."[1]

The district court refused to "get involved in the settlement of this case" and added that, if Porter believed the prosecuting attorney had a conflict of interest, "then [it would] leave that up to [Porter]." Porter stated that he would "move as quickly as possible," and the parties briefly discussed discovery. The district court stated that the January trial date meant that any motions had to be filed by November 24 and heard by December 20, 2023.

After the hearing, Porter moved to disqualify the prosecuting attorney and the county attorney's office from the case for conflict of interest. The prosecuting attorney opposed the motion, arguing that neither the rules of professional conduct nor relevant caselaw supported Porter's motion to disqualify.

[1] The state's offer provided that Porter would "plead to the offense as charged" and serve "21 months as an aggravated dispositional departure." Porter's attorney noted that he had handled 50-75 threats-of-violence cases and had "never received an offer that poor," pointing out that the offer required Porter to agree to an "upward aggravated departure." Porter's attorney urged that the state's initial plea offer was evidence that the prosecuting attorney is "treating this case differently than they would treat a normal case."

At a motion hearing, Porter argued that the prosecuting attorney and the county attorney's office had a conflict of interest because the prosecuting attorney—and the other assistant county attorneys—appeared regularly before the judge who received Porter's letter. Porter contended that the prosecuting attorney may "seek to obtain exceptionally favorable results for the alleged victim in this case as it would potentially benefit the prosecutor in his other cases." Porter maintained that the prosecuting attorney's plea offer had "already shown a level of aggressive posturing that's disproportionate to the case at hand" given that the threat was "nonspecific and by letter." Porter added that the conflict of interest was highlighted by the recusals of other "justice partners"—the other two district court judges seated in Chisago County and the public defenders' office in that county.

Finally, Porter pointed out that the police report of the incident established that an investigator asked the judge who received the letter about pursuing the case against Porter and the judge stated that "she would like this matter to be investigated." Porter argued that disqualification was supported by the Minnesota Rules of Professional Conduct and analogous caselaw. He also urged that the district court should "exercise its discretionary and inherent power to supervise activities of the bar and disqualify" the prosecuting attorney and the county attorney's office "from participating in the prosecution of this case."

The prosecuting attorney implicitly acknowledged that, while proceeding on the charge against Porter, he appeared in other matters before the judge who received Porter's letter. The prosecuting attorney added, however, that he had no personal relationship with that judge and therefore had no conflict of interest. As for the state's initial plea offer to

Porter, the prosecuting attorney stated that the offer was based on the "particularly egregious threat of violence" and that it was not intended to "curry favor" with any judge.

The district court acknowledged Porter's argument and concerns about the initial plea offer but stated that it "would not" disqualify a prosecuting attorney "unless [it] was certain that there was some type of personal relationship or a clear conflict with the office." The district court added that it did not "find that here." The district court also determined that neither the prosecuting attorney nor the county attorney's office was "in any way [trying] to curry favor" with the judge who received the letter or "any of the other judges" in Chisago County. The district court recognized that the state "has been aggressive in the prosecution of threats of violence against . . . judicial officers," but explained that this approach is based on the state's position that the crime "is an attack" on the judicial system. The district court denied Porter's motion.

The state's case against Porter proceeded to a jury trial. The state presented the following evidence: testimony from the judge who received Porter's letter; the letter the judge received; Porter's statement to a law-enforcement investigator that he sent the letter to the judge; and testimony from the investigator that the judge stated that "she wanted it investigated and wanted to pursue charges." Porter did not testify or call any witnesses. The jury found Porter guilty. The district court sentenced Porter to 18 months in prison to be served consecutively to his current sentence.

Porter appeals.

DECISION

Porter argues that the district court erred by denying his motion to disqualify the prosecuting attorney and the county attorney's office, contending that the denial affected his fair-trial and due-process rights and led to structural error. Appellate courts "review the district court's decision regarding disqualification of counsel for an abuse of discretion." *State by Swanson v. 3M Co.*, 845 N.W.2d 808, 816-17 (Minn. 2014) (applying the abuse-of-discretion standard of review to a district court's decision about a law firm's conflict of interest). "A district court abuses its discretion when it bases its decision on an erroneous view of the law or it renders a decision that is contrary to the facts in the record." *Id.*

Porter argues that the prosecuting attorney and the county attorney's office violated Minnesota Rule of Professional Conduct 1.7 by representing the state in its case against Porter for threats of violence in the same county in which the county attorney's office routinely appears before the judge who received the letter that was central to the state's case. Under rule 1.7(a), "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." Minn. R. Prof. Conduct 1.7(a).

The parties agree, as do we, that the judge, while a victim in the threats-of-violence charge, is not the client of the prosecuting attorney or the county attorney's office. *See State v. Penkaty*, 708 N.W.2d 185, 196 (Minn. 2006) ("[A] prosecutor does not 'represent' the victim."). The parties also appear to agree, and we concur, that the prosecuting attorney and the county attorney's office represent the state as "minister[s] of justice" and that the county attorney's office is part of the executive branch. *State v. Cabrera*, 700 N.W.2d 469,

475 (Minn. 2005) ("The prosecutor is a minister of justice whose obligation is to guard the rights of the accused as well as to enforce the rights of the public." (quotations omitted)); Minn. R. Prof. Conduct 3.8 cmt. 1 (stating that a "prosecutor has the responsibility of a minister of justice and not simply that of an advocate" and has "specific obligations to see that the defendant is accorded procedural justice").

Porter appears to claim that the victim, who is a sitting district court judge presiding over other cases handled by the prosecuting attorney and the county attorney's office, is a third person to whom the prosecuting attorney had responsibilities that allegedly conflicted with the prosecuting attorney's responsibilities to their client or as a minister of justice in Porter's case, as proscribed by rule 1.7(a)(2).

A concurrent conflict of interest exists when "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer." Minn. R. Prof. Conduct 1.7(a)(2). "The mere possibility of subsequent harm" is not enough to show a conflict of interest. Minn. R. Prof. Conduct 1.7 cmt. 8. "The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client." *Id.*

Porter argues that, because each assistant county attorney in Chisago County has "one-third" of their cases assigned to the judge who received Porter's letter, "there was a significant risk that" the prosecuting attorney and the county attorney's office had an

interest in obtaining a favorable result in Porter's case such that the interest "materially limited" their legal representation.

The state responds that the prosecuting attorney and the county attorney's office did not have a conflict under rule 1.7 for three reasons: (1) as Porter acknowledges, the judge who received the letter is not the client, (2) "[t]he basis for [Porter's] claim . . . is repeatedly not specified," and (3) Porter's argument that each assistant county attorney would seek good results to "curry favor" from the judge who received the letter "is entirely speculative."

We conclude, for reasons like those described by the state, that neither the prosecuting attorney nor the county attorney's office had a conflict of interest in Porter's case. First, the prosecuting attorney and the county attorney's office are representing the same client—the state—in *all* criminal cases, some of which are assigned to be heard by the judge who received Porter's letter. The state's interest in criminal prosecution does not conflict with its interest in prosecuting the case against Porter. As the supreme court explained in *Penkaty*, the prosecuting attorney's duty "to see that justice is done on behalf of both the victim and the defendant" supersedes any personal or government interest in being the prevailing party. 708 N.W.2d at 196-97. Even if we accept Porter's theory that the prosecuting attorney litigated this case more vigorously than the average threats-of-violence case, this is not a "material limitation" on its representation of the state's interests under Minn. R. Prof. Conduct 1.7(a)(2). The state's interest in prosecuting crimes comports with its interest in vigorously and justly litigating the case against Porter.

Second, we discern no basis for Porter's implicit claim that the supposed conflict of interest created a significant risk of material interference in the prosecuting attorney's professional judgment. Porter maintains that the alleged conflict of interest affected the prosecuting attorney's evaluation of Porter's case, resulting in an unfair plea offer. He argues that the initial plea offer was "excessive on its face" because the proposed sentence required an upward departure and "the state had not filed notice of aggravating factors."

We are aware of no legal authority suggesting that a state's plea offer—which, here, was within what the applicable law allowed—could sustain a conflict-of-interest claim. But even if we assume that a plea offer could sustain a conflict-of-interest claim, we are not persuaded by Porter's analysis. During district court proceedings, the prosecuting attorney argued that the initial plea offer was based on the egregiousness of the conduct underlying the charge against Porter. A threat of violence against a judicial officer is an egregious offense, and the prosecuting attorney's initial plea offer reflects that severity. The judge's statement to law enforcement that they should investigate the threatening letter is appropriate for the same reason. Also, the prosecuting attorney made a subsequent plea offer to recommend a sentence within the range established by the Minnesota Sentencing Guidelines, which Porter did not accept. We conclude that the initial plea offer does not support Porter's claim that an alleged conflict of interest materially interfered with the prosecuting attorney's professional judgment.

Third, Porter's argument that a conflict exists based on an analogy to caselaw is unpersuasive. Rule 1.7 and caselaw recognize that conflicts of interest may stem from financial, familial, or personal relationships. Minn. R. Prof. Conduct 1.7 cmts. 9-11

(describing fiduciary, pecuniary, and personal relationships that may materially limit a lawyer's representation of a client); *see, e.g.*, *State v. Jacobs (In re Jacobs)*, 802 N.W.2d 748, 750-55 (Minn. 2011) (considering whether a judge was disqualified from presiding over a criminal case, based on the judge's marriage to a prosecuting attorney from the county attorney's office that was prosecuting the case, when the judge's spouse did not appear in or otherwise handle that case); *Kennedy v. L.D.*, 430 N.W.2d 833, 837 (Minn. 1988) (in an attorney-discipline case, summarizing caselaw on conflicts arising from pecuniary interests, personal disputes, familial or social relationships, and other personal interests). But this record reflects no analogous familial or personal conflict in the prosecuting attorney's representation of the state's case against Porter.

As for financial relationships, the prosecuting attorney and county attorney's office had no pecuniary interest in the case against Porter, unlike the prosecuting attorney who was disciplined for his decisions in cases against his creditors. *See In re Disciplinary Action Against Serstock*, 432 N.W.2d 179, 179-81 (Minn. 1988) (concluding in a disciplinary case that an attorney committed misconduct by "improperly dismissing or delaying disposition of traffic tickets" for his creditors in exchange for personal financial benefits).

Finally, Porter's prosecution did not benefit the prosecuting attorney or the county attorney's office in ways contrary to the interests of justice. *See Janssen v. 2012 Harley Davidson Motorcycle*, No. A18-1015, 2019 WL 3886607, at *2 (Minn. App. Aug. 19, 2019) (concluding, in a nonprecedential opinion, that a district court erred in disqualifying,

based on the county's financial interest in the appellant's motorcycle, a prosecuting attorney in a forfeiture action related to a driving-while-intoxicated conviction).[2]

For these reasons, we conclude that the district court did not abuse its discretion by denying Porter's motion to disqualify the prosecuting attorney and the county attorney's office.

The state also argues that Porter raises new or different arguments for the first time on appeal by contending that the district court's order amounted to constitutional violations and structural error. Porter acknowledges that he did not make these arguments below and asks this court to consider the constitutional issues. Because we conclude that no conflict of interest arose here, we need not address Porter's arguments about constitutional violations and structural error.

Affirmed.

[2] While nonprecedential opinions are not "binding authority," they "may be cited as persuasive authority." *State v. Monyak*, 14 N.W.3d 210, 215 n.2 (Minn. App. 2024). We cite *Janssen* because it considered a motion to disqualify a prosecuting attorney based on a conflict of interest.