

Crime Victims' Rights Report 2005

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This is the first annual report to Congress on crime victims' rights as required under the Justice for All Act of 2004, § 104(a), 18 U.S.C. § 3771 note (Supp. I 2005). The AO is required to report "the number of times that a right established in Chapter 237 of title 18, United States Code² is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to Chapter 237 of title 18, and the result reached." *Id.* In the past year, the courts have reported the denial of relief under the Act in one case and mandamus actions brought pursuant to the Act in two additional cases. This report provides the results of the mandamus actions and the reasons provided by the courts for their decisions in each of these cases.

In re Kari Ann Jacobsen, No. 05-7086 (D.C. Cir. Jul. 8. 2005). Petitioner Terri Jacobsen sought a writ of mandamus in the United States Court of Appeals for the District of Columbia Circuit, pursuant to 18 U.S.C. § 3771(d), to stay the proceedings in *United States v. Hall*, D.C. Super. Ct. Crim. Action No. 2140-03. In particular, petitioner sought to delay the Superior Court's acceptance of Mr. Hall's guilty plea and sentencing. The appeals court, however, found that the Superior Court judge had already stated on the record that he would not accept the defendant's guilty plea until victim impact statements had been filed and the victim's family could be heard. In addition, the judge had stated his willingness to hold separate hearings on whether to accept the guilty plea and on whether to sentence the defendant in accordance with a plea agreement. The appeals court concluded that this was exactly the relief petitioner was seeking and therefore denied the mandamus petition as moot.

In re WR; Huff Asset Mgmt. Co., Nos. 05-1619-op (L) and 05-2628-op (CON) (2d. Cir. June 6. 2005). Petitioners W.R. Huff Asset Management Co. and Eminence Capital LLC filed mandamus actions, which were then consolidated into one action, in the United States Court of Appeals the Second Circuit seeking to vacate a settlement order entered by the United States District Court for the Southern District of New York in the underlying case of *United States v. Rigas*, No. 02-cr-1236. After a hearing at which objections by both sets of petitioners were heard, the district court entered its order accepting a settlement agreement among the United States and Rigas family members for the forfeiture of designated assets and the establishment of a \$715 million fund for victims of a securities fraud committed in part by John and Timothy Rigas. Tens of thousands of victims were affected, and the court and the government took numerous steps to notify as many victims as possible. Petitioners asserted, however, that the settlement agreement violated their rights to receive full and timely restitution and to be treated fairly as provided under 18 U.S.C. § 3771(a)(6) and (8). In addition, petitioners claimed that their right to confer with the government's attorney was denied in violation of § 3771(a)(5). The appeals court concluded that abuse of discretion was the appropriate standard of review and, accordingly, found that the district court acted reasonably in accepting the settlement agreement,

which involved a complex balancing of multiple interests, including the victims'. In addition, the court noted that no petitioner had alleged that it asked to confer with the government and was denied the opportunity to do so. Accordingly, the appeals court found that the district court did not abuse its discretion in accepting the settlement agreement, and the mandamus petition was denied.

United States v. Tobin, Crim. No. 04-216-01-SM (D.N.H. Jul 22, 2005). The United States District Court for the District of New Hampshire granted a joint request by the government and the defendant for a 90-day continuance of the trial, notwithstanding the New Hampshire Democratic Party's (NHDP) objection. The court did acknowledge that a victim has a right to proceedings free from unreasonable delay under 18 U.S.C. § 3771(a)(7). The court concluded, however, that the continuance did not constitute unreasonable or undue delay, that it was consistent with the Speedy Trial Act's purposes and the defendant's due process rights, and that it did not violate any legitimate right asserted by the NHDP.