

Crime Victims' Rights Report 2018

Summary – uscourts.gov

This is the fourteenth report to Congress on crime victims' rights under § 104(a) of the Justice for All Act of 2004, Pub. L. No. 108-405. Section 104(a) requires the Administrative Office of the United States Courts (AO) to report “the number of times that a right established in Chapter 237 of title 18, United States Code, 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.” Title I of the Justice for All Act of 2004 is commonly referred to as the Crime Victims' Rights Act (CVRA) and is codified at 18 U.S.C. § 3771.

During fiscal year 2018, more than 69,600 criminal cases were filed in the federal trial courts, involving more than 87,100 defendants. For that year, the AO received reports from the appellate courts on three mandamus actions brought per the provisions of the CVRA and identified three appellate court cases and five district court cases that meet the statute's reporting criteria. Summaries of those mandamus and trial court actions follow, including the reasons provided for the decisions in each of the cases. Related cases are combined into a single summary.

Fed. Ins. Co. v. United States, 882 F.3d 348 (2d Cir. 2018). An employee of Science Applications International Corporation (SAIC) admitted to receiving bribes and kickbacks for steering work on a city project to a subcontractor. An insurer paid SAIC for its claim that the improper payments were wrongfully appropriated SAIC property. During defendant's sentencing, the insurer sought restitution. The district court denied the motion, holding that SAIC was a co-conspirator in the criminal conduct, had entered into a deferred prosecution agreement whereby it agreed to make no claims to funds it forfeited to the government, and had passed along the cost of defendant's misconduct to the city through a contract amendment. The insurer sought a writ of mandamus. Also, after the district court granted the government's request for a consent preliminary order of forfeiture, the insurer filed a petition asserting a superior right in forfeited property. The district court dismissed this petition. The United States Court of Appeals for the Second Circuit denied the mandamus petition, holding that the district court did not abuse its discretion when it found that SAIC was implicated in the offenses, so neither SAIC nor the insurer as its subrogee were entitled to restitution pursuant to the CVRA. Defendant's offenses were connected to a scheme for which SAIC acknowledged responsibility in its deferred prosecution agreement, and because the contract amendment “changed the nature of the scheme to benefit SAIC at the City's expense . . . the district court did not need to find that SAIC was willfully blind, let alone affirmatively complicit.” However, the dismissal of the insurer's other petition was vacated and remanded for further proceedings on “whether SAIC's allegedly unclean hands should bar it from obtaining an equitable remedy” or, if a remedy is available, whether defendant obtained property traced to bribes and kickbacks obtained at SAIC's expense.

In re Burgess, 739 F. Appx 169 (3d Cir. 2018). Petitioner residing in California brought an action in Delaware accusing a California firm of seizing and effectively stealing bankruptcy estate property. When the district court transferred the case to the Central District of California, petitioner sought a writ of mandamus, citing the CVRA. The United States Court of Appeals for the Third Circuit denied the petition. First, no facts showed that petitioner was the victim of a federal offense or a crime committed in the District of Columbia. Second, even if petitioner did meet the statutory definition of a crime victim, the CVRA required him to seek relief in federal court in California, where the alleged crimes occurred. Third, no one shall use the CVRA either to “authorize a cause of action for damages” or to initiate criminal proceedings and thereby “impair the prosecutorial discretion of the Attorney General or any officer under his direction.” Because no convicted criminals or restitution orders were relevant to the facts of this case, petitioner was not entitled to restitution under the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A, via the CVRA. “The CVRA is not legitimately implicated” by the mandamus petition, and the district court did not err in transferring the case.

In re Linlor, 713 F. Appx 228 (4th Cir. 2018) (per curiam). A man asserted that a Transportation Security Administration (TSA) screener committed felony sexual battery against him during a pat-down at an airport. He sought a writ of mandamus to compel the county sheriff to take the TSA screener into custody and to require the county magistrate to hold a probable cause hearing that petitioner was entitled to attend under the CVRA. The United States Court of Appeals for the Fourth Circuit dismissed the petition. The act alleged is a state crime, not a federal offense or an offense in the District of Columbia, so petitioner did not meet the CVRA’s definition of a crime victim. Although the circuit court “has jurisdiction to enforce the protections of the CVRA through mandamus review of a district judge’s denial of those protections,” it has no “authority over state criminal prosecutions or mandamus jurisdiction over state or local officials.”

United States v. Gross, No. 18-50368, 2018 WL 1804691 (E.D. Mich. Apr. 17, 2018) (slip copy). An attorney pled guilty to wire fraud. A former client moved to be declared a victim eligible for restitution, claiming he had loaned more than \$1.6 million to defendant’s confederates and received only \$100,000 in repayments. The district court denied the motion. Evidence did not show that movant was a victim of the crime for which defendant faced sentencing or that movant was entitled to the protection of the CVRA. The plea agreement addresses discrete transactions with only some of defendant’s clients, who were victims not of a common plan, but of specific acts. Movant did not show that he was harmed by any of these acts or that any harm he experienced “was a foreseeable consequence of the particular frauds perpetrated by the defendant on other victims by other means.” The crime that defendant confessed to in this case did not involve a common scheme that might entitle movant to restitution under the CVRA, as distinctly different misrepresentations were made to different

victims. Furthermore, movant admitted that he made more loans after he learned that the funds were used to retire casino markers, indicating he considered the investment reasonable.

United States v. Gross, Nos. 17-20790; 18-50728; 18-50729; 18-50827; 18-50844, 2018 WL 4610865 (E.D. Mich. Sept. 26, 2018) (slip copy). An attorney pled guilty to wire fraud. Four parties moved to be recognized as defendant's victims and to receive restitution pursuant to the CVRA. One motion was granted in part, and the other motions were denied. The district court explained that according to the CVRA, a crime victim is "directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia" and that a party may be a victim without being the target of the crime "as long as it suffers harm as a result of the crime's commission." The court added that restitution for fraud requires proof that the victim relied on the fraudulent conduct or misrepresentations. The record established that one commercial lending firm was a victim, but restitution could not be ordered unless the firm supplemented its presentation by establishing the full amount of its loss, which it was ordered to do "promptly." A funding and loan servicing firm failed to prove it had been harmed by specific misrepresentations in the loan transaction. One couple's motion did not show they had relied on any specific fraudulent misrepresentations and argued only that they had been victims of uncharged conduct unrelated to the crime of which defendant was convicted. Another couple failed to identify any misrepresentations made by defendant that they relied on to their detriment.

United States v. Reid, No. 18-20023, 2018 WL 4853542 (E.D. Mich. Oct. 5, 2018) (slip copy). Defendant entered into a plea agreement whereby he pled guilty to being a felon in possession of a firearm. The presentence report noted that police found the handgun while investigating a report that defendant was physically assaulting his former girlfriend. At sentencing, the government asked the district court to order defendant to pay \$7,680 to the woman to compensate her for physical and emotional injuries caused by the assault. The motion was denied. The CVRA provides that the victim of a crime is entitled to "full and timely restitution as provided in law," but the crime of which defendant was convicted was not a crime of violence, and "it is difficult to identify a 'victim' of a possessory offense, like the one in this case." The woman was not harmed by defendant's mere possession of the firearm, but rather by the assault that included actions that preceded and followed the handgun possession. "[T]herefore she cannot be 'an identifiable victim . . . [who] has suffered a physical injury' as a result of the offense of conviction." Although defendant unquestionably caused his former girlfriend to suffer a loss, that loss cannot be redressed by the Mandatory Victims Restitution Act or the CVRA based on defendant's conviction in this case.

United States v. Ruzicka, 331 F. Supp. 3d 888 (D. Minn. 2018). Restricted stockholders of a subsidiary in which a corporation owned a 49 percent interest were convicted of crimes arising from the fraudulent taking of money from the corporation. Both the corporation and an individual who was the majority shareholder in the corporation requested permission to file a

motion as victims under the CVRA. The district court found that the corporation was a victim and allowed it to file the motion, but denied the individual's request. The restricted stock transaction and grossing up of the proceeds by defendants amounted to the commission of a federal offense. However, the CVRA also requires that a victim be "directly and proximately harmed as a result of a Federal offense." The individual did not meet these criteria. Even a sole shareholder—which this person was not—is not a victim of harm to a corporation absent an economic loss causally linked to the defendant's fraud or to the shareholder's reliance on fraudulent representations to invest in the corporation. The individual never claimed that the value of his shares in the corporation depreciated or that he invested additional money in the corporation because of the scheme. He therefore was an "ancillary" victim of the fraud, whereas the corporation was a direct victim. "The distinction is important and must be rigorously enforced to ensure efficiency in judicial proceedings," for if merely owning stock in victim corporation made all shareholders victims as well, then these shareholders would be entitled to be heard at public proceedings, to confer with government counsel, and to receive restitution. "The Court must avoid turning a criminal trial into a judge-led shareholder meeting."

United States v. Afriyie, No. 16-CR-377 (PAE), 2017 WL 6375781 (S.D.N.Y. Dec. 18, 2017). Defendant was convicted of securities fraud and wire fraud based on insider trading he conducted as an analyst with the victimized corporation. Defendant objected to the government's proposed order of forfeiture, but the corporation did not. Thereafter the corporation asked the district court to vacate its final order of forfeiture pursuant to Fed.R.Proc. 60 and the CVRA and instead have the specific property that the court had ordered forfeited be used to pay defendant's restitution obligation. The motion was dismissed. Defendant had filed a notice of appeal, so the district court lacked jurisdiction to rule on the motion. In the interest of judicial economy, the district court explained why it would have denied the motion on the merits. At sentencing a preliminary ruling was made that the corporation was entitled to restitution. However, by that time, the court had issued both a final order of forfeiture and a preliminary forfeiture order regarding substitute assets, which were properly publicized. "At no point during those events did [the corporation] raise an objection or otherwise request that the Court prioritize restitution over forfeiture," so the request now to vacate the final forfeiture order was too late and made by an inappropriate vehicle. "Once the Government has secured a stipulation as to forfeitability, third-party claimants can establish their entitlement to return of the assets only by means of the hearing afforded under 21 U.S.C. § 853(n)," *Libretti v. United States*, 516 U.S. 29, 44 (1995). The CVRA guarantees that a victim shall receive full and timely restitution "as provided in law." After the assets were judicially forfeited, only the U.S. attorney general had the authority to distribute those funds. The corporation had to seek relief from the U.S. Department of Justice rather than the district court.