

Crime Victims' Rights Report 2015

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This is the eleventh annual 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 is commonly referred to as the Crime Victims' Rights Act (CVRA) and is codified at 18 U.S.C. § 3771.

In the federal trial courts, there were more than 61,200 criminal cases filed involving more than 80,000 defendants during fiscal year 2015. In the past year, the AO has received reports from the appellate courts on 7 mandamus actions brought per the provisions of the CVRA and has similarly identified 11 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 one summary.

United States v. Hernan Giraldo-Serna, 1:04-cr-00114-RBW-1 (D.D.C. Aug. 6, 2015). Defendant, leader of a paramilitary group in Colombia, pled guilty to "one count of conspiring to manufacture and distribute five or more kilograms of cocaine, with the intent or knowledge that the cocaine would be unlawfully imported into the United States from Colombia." Children of an individual who was killed by the paramilitary group filed a motion seeking to be recognized as crime victims in this case. To qualify as a victim under the CVRA, a person must be directly and proximately harmed as a result of the commission of the offense. In this case, the court observed that neither the indictment nor the statement of facts made any reference to the use of force or violence in the charged conspiracy. Although the movants attempted to show a causal connection between their father's death and the defendant's charged conspiracy, the court ruled that it was insufficient. The death of movants' father was too factually attenuated from the conspiracy, so the court denied the motion for victims' rights under the CVRA.

In re: *Estate of Arthur Barrett*, No. 14-1236 (1st Cir. Nov. 20, 2014). Petitioner Barrett sought a petition for a writ of mandamus in the United States Court of Appeals for the First Circuit, pursuant to 18 U.S.C. § 3771(d)(3), challenging the terms of the district court's judgment that was handed down on November 19, 2013, and directing the district court to reopen the underlying case of *United States v. James J. Bulger*, No. 1:99-cr-10371-DJC-3 (D. Mass. 2013). The government filed a motion to dismiss for lack of diligent prosecution. After reviewing petitioner's submissions and relevant portions of the record, the court determined that petitioner

missed deadlines and filed her opening brief "months out of time." Accordingly, the court granted the government's motion and dismissed the petition for a writ of mandamus.

In re: Armando Pons, Nos. 14-2101, 14-2102, and 14-2320 (1st Cir. Oct. 23, 2014, and Dec. 11, 2014). Petitioner Pons sought a writ of mandamus in the United States Court of Appeals for the First Circuit pursuant to 18 U.S.C. § 3771(d), claiming that he had been victimized "during eleven (11) years AND twenty two (22) months of involuntary and unjust imprisonment." Similar allegations were made in the United States Court of Appeals for the Seventh Circuit. See In re: Armando D. Pons *infra*. In denying the petitions, the court stated, "These filings, while invoking 18 U.S.C. § 3771(d), do not come within its terms."

United States v. Gary Lee Sampson, 1:01-cr-10384-MLW-1 (D. Mass. Dec. 23, 2014). Defendant pled guilty to carjackings resulting in death and received a death sentence, which was affirmed on appeal. The sentence was later vacated upon a finding of juror misconduct. On remand, a second jury trial commenced to determine whether the death penalty was justified, and the defendant sought a continuance. The government objected, emphasizing the rights of the families of the victims to proceedings "free from unreasonable delay" under the CVRA. The court noted that the victims' families have a significant interest in this case, including the right to a retrial without "unreasonable delay" and a "right to be treated with fairness and with respect for [their] dignity and privacy." See 18 U.S.C. § 3771(a)(7), (8). The court, however, concluded that a seven-month continuance was warranted. The court stated that "A reasonable continuance will provide time for Sampson's counsel to prepare properly. It will also afford an opportunity for issues to be properly presented to the court and to be decided thoughtfully. This process should maximize the likelihood that the result of the retrial will be both fair and final--a result which will serve the interest of everyone so deeply concerned about this case."

United States v. Harry K. Roche, 1:13-cr-00060-SLR (D. Del. Mar. 13, 2015). Defendant was charged with various child pornography offenses and pled guilty to transportation of child pornography. Before the plea was entered, a victim requested restitution. The defense objected, arguing that the government did not establish that defendant's behavior was the proximate cause of victim's harm. The government conceded that the victim, who submitted the request prior to the plea, was not a victim of the offense of conviction. Accordingly, the court denied the victim's request for restitution.

United States v. Kevin J Wick, 5:15-cr-00039-JPB-JES (N.D. W.Va. July 24, 2015). Defendant was charged with various child sex abuse offenses. On behalf of the minor victims, the government filed a motion for a protective order related to discovery materials which included statements about the victims. In doing so, the government asserted rights to "privacy" and "welfare" under the CVRA and the Child Victims' and Child Witnesses' Rights Act, 18

U.S.C. § 3771 and 18 U.S.C. § 3509. The court observed that the Federal Rules of Criminal Procedure provide the defendant with access to discovery materials, but allow a court "for good cause" to "deny, restrict, or defer discovery or inspection, or grant other appropriate relief." Fed. R. Crim. P. 16(d)(1). Finding that existing statutes already provide protections to minor victims that require the defendant to safeguard the documents, the court determined that the government's vague justifications of "privacy" and "welfare" failed to demonstrate good cause for the protective order. As such, the motion for a protective order was denied.

In re: Steven Sewell (formerly Sealed Petitioner), No. 15-30325 (5th Cir. Apr. 16, 2015). Defendant pled guilty to conspiracy to bribe a public official and false certification of financial reports in the underlying case of *United States v. Fradella*, No. 2:12-cr-00207-SM-JCW-1 (E.D. La. 2015). Petitioner sought restitution under the Mandatory Victim Restitution Act, claiming that the false certifications led to a large loss in a business venture he had with defendant. Approximately two months after the district court denied restitution and the defendant was sentenced, petitioner sought a writ of mandamus in the United States Court of Appeals for the Fifth Circuit, pursuant to 18 U.S.C. § 3771(d)(3). The appellate court observed that one of the statutory requirements for mandamus review states that the petition must be filed in the appellate court no later than 14 days after the plea or sentence. See 18 U.S.C. § 3771(d)(5)(B). Because petitioner waited nearly two months after sentencing to file his petition, the court held that he was not statutorily eligible for a writ of mandamus. Thus, the petition was dismissed.

In re: William Stephens. Director, Texas Department of Criminal Justice, Correctional Institutions Division, No. 15-41079 (5th Cir. Aug. 14, 2015). In a death penalty case, defendant Gardner filed a motion seeking additional federal habeas counsel in the Eastern District of Texas in August of 2013 (see *Gardner Jr. v. Director*, TDCJ-CID, 1:10-cv-00610). Two years later, petitioner Stephens sought a writ of mandamus in the United States Court of Appeals for the Fifth Circuit, pursuant to 18 U.S.C. § 3771(d)(3), asserting the right to proceedings free from unreasonable delay and directing the district court to lift a stay and rule on the pending motion. While the petition was pending in the Fifth Circuit, the district court granted defendant's motion for supplemental counsel. Therefore, the appellate court denied the petition for a writ of mandamus as moot.

In re: Danielle Davian, No. 15-3092 (6th Cir. Feb. 6, 2015). Defendant pled guilty to multiple counts of securities fraud, mail fraud, wire fraud, and money laundering in the underlying case of *United States v. Davian*, No. 5:14-cr-00081-1 (N.D. Ohio 2014). The government notified the defendant's wife (petitioner) that she was a victim under the CVRA and advised her of her rights. Eight weeks after entry of the final judgment, petitioner attempted to file a motion to accelerate the production of the sentencing transcript and to expedite the consideration of a Freedom of Information Act request she submitted to the Department of

Justice. Determining that petitioner was not a 'party' to the action, the district court declined to docket her motion.

Petitioner sought a writ of mandamus in the United States Court of Appeals for the Sixth Circuit, pursuant to 18 U.S.C. § 3771(d)(3), ordering the district court to recognize her interest in this case as a crime victim and allow her to file a post-judgment motion to enforce her rights under the CVRA. The CVRA gives victims certain rights to participate in the criminal trial process, but those rights are limited. See 18 U.S.C. § 3771(a). In order to prevail at the appellate level, petitioner must demonstrate that she has a clear and indisputable right to the writ. The appellate court observed that the district court did not find that petitioner was not a victim, but rather that she was not a 'party' to the case. The court further noted that the criminal trial proceeding had already concluded, and any attempt to intervene after the fact may "fall outside the scope of protection provided by the CVRA." *In re Siler*, 571 F.3d 604, 609 (6th Cir. 2009). Accordingly, the court found that the petitioner had not demonstrated a clear and indisputable right to the writ and denied the petition for a writ of mandamus.

In re: Armando D. Pons, No. 14-3372 (7th Cir. Oct. 30, 2014). Petitioner Pons sought a writ of mandamus in the United States Court of Appeals for the Seventh Circuit, pursuant to 18 U.S.C. § 3771(d)(3), claiming that he had been victimized "during eleven (11) years AND twenty two (22) months of involuntary and unjust imprisonment." Similar allegations were made in the United States Court of Appeals for the First Circuit. See *In re: Armando D. Pons supra*. The court noted that petitioner did not specify which of his rights under 18 U.S.C. § 3771(a) were being denied, and further noted that the CVRA provides rights to victims only. Determining that petitioner was not a victim of any offense, the court declined to grant petitioner any relief pursuant to the CVRA.

United States v. Julia R. Thiemann, 4:14-cr-3051 (D. Neb. Apr. 9, 2015). In a child pornography case, the court granted restitution to one victim. Minutes before the imposition of a sentence, the government submitted a new restitution claim for another victim. The court determined that the restitution claim was untimely and would have caused an unwarranted sentencing disparity because the more culpable offender, who had been previously sentenced, escaped the restitution claim altogether because of the untimely nature of the submission. Therefore, the request for restitution was denied.

In re: Her Majesty the Queen in Right of Canada, No. 15-71346 (9th Cir. May 12, 2015). Defendant pled guilty to multiple counts of conspiracy and wire fraud involving a United States program for renewable fuel and energy credits in the underlying case of *United States v. Nathan "Nati" Stoliar*, No. 2:14-cr-0006-APG-GWF (D. Nev. 2015). The Canadian government, succumbing to a similar fraud by defendant in its biofuel subsidy program, sought restitution in the amount of \$1,233,065.32 CAD under the Mandatory Victims Restitution Act (MVRA 18 U.S.C. § 3663A). Finding that Canada was not a victim of the offenses defendant was convicted of in the United States, the district court denied the request for restitution.

Petitioner sought a writ of mandamus in the United States Court of Appeals for the Ninth Circuit, pursuant to 18 U.S.C. § 3771(d)(3), challenging the denial of restitution. The court noted that in order to issue a writ of mandamus, it must find an abuse of discretion or legal error in the district court's order. In this case, defendant was convicted of offenses that established a "scheme, conspiracy, or pattern of criminal activity," so the court found that victims directly harmed by the entire scheme were entitled to restitution, not just those individuals that were harmed by the particular counts of conviction. The schemes, however, in the United States and Canada were different. "The schemes were accomplished by different means, had different victims, and took place in primarily different countries." Accordingly, the court ruled that Canada's claim for restitution was based on events that were not causally linked to the schemes that led to the defendant's conviction. Thus, the petition for a writ of mandamus was denied.

United States v. Christopher Darrell (2), 2:14-cr-00500-JAT (D. Ariz. May 5, 2015). Defendant, charged with three counts of assault and robbery, requested a 30-day continuance because defense counsel was still reviewing mitigation material. Although the government did not object to the motion, the victim opposed the continuance. Finding that the defendant's need to prepare effectively for sentencing outweighed the best interests of the public in a speedy disposition, the court granted the continuance.

United States v. Delores Reeves, 3:15-cr-00055-VC-1 (N.D. Cal. Aug. 5, 2015). Defendant was convicted of mail fraud and ID theft. Several individuals asserted the right to full and timely restitution under the CVRA claiming that they had been defrauded by the defendant. They wrote letters and spoke at the sentencing hearing. At sentencing, the judge awarded restitution in the amount of \$150,000 to the victim of the ID theft offense. Determining that the other individuals were not victims of any of the offenses the defendant was charged with, the court concluded that they were not victims in this case and declined to grant restitution.

United States v. Charles Pete Eyle, 1:14-cr-02058-WFN-1 (E.D. Wash. Feb. 10, 2015). In a child sex abuse case, defendant requested a continuance and the government indicated that one of the victims objected to any further continuance. Finding that the defendant needed time to review discovery and prepare for trial, the court held that the need to grant a continuance in this trial outweighed the best interests of the victim, the public, and the defendant's right to a speedy trial. Thus, the victim's objection was overruled and the continuance was granted.

United States v. Christopher Thiessen, 5:14-cr-40106-01-DDC (D. Kan. Aug. 12, 2015). In a child sexual exploitation case, a victim asserted the right to "full and timely restitution" under the CVRA, seeking restitution in the amount of \$58,415. After careful consideration, the judge determined that the victim was entitled to some restitution, but not the full amount

requested. The victim was awarded \$3,000 in restitution. Thus, the victim's request was granted in part and denied in part.

United States v. Neal D. Kasper, et al., 1:12-cr-00413-MV (D.N.M. Nov. 16, 2014). Defendants, all employees of the Laguna Construction Company, Inc. (LCC), were charged with various counts of wire fraud for allegedly siphoning money from LCC to themselves and other officers. As a result of the alleged misconduct, LCC could no longer operate as an ongoing business and is "in the process of dissolving." Pueblo of Laguna, a federally recognized tribal government and the sole shareholder of LCC, sought to be recognized as a crime victim so that it could assert rights under the CVRA, including the right to "proceedings free from unreasonable delay." According to 18 U.S.C. § 3771(e), a crime victim is a "person directly and proximately harmed as a result of the federal criminal offense." The court observed that the general definition of a person includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." Finding that the Pueblo of Laguna did not fall into any of these categories because of its inherent sovereign authority, the court declined to recognize the tribal government as a crime victim.

United States v. Matthew Lane Durham, 5:14-cr-00231-R (W.D. Okla. Jan. 24, 2015). Defendant was charged with 24 counts of child sexual abuse. Prosecutors were concerned that the defendant had discovery documents in his jail cell which contained victim information. They were also concerned that images of the victims were on the internet. On behalf of the victims, the government sought a protective order asserting the right to be reasonably protected from the accused and the right to be treated with fairness and with respect for the victim's dignity and privacy. See 18 U.S.C. § 3771(a)(1),(8). After defense counsel confirmed that the defendant did not have any discovery documents in his jail cell and that the defendant did not have control over any of the images that were posted on the internet, the judge denied the government's motion for a protective order.