

## Crime Victims' Rights Report 2006

### Summary - uscourts.gov

This is the second 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). Pursuant to that legislation, the Administrative Office of the United States Courts (AO) is 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." *Id.* In the past year, the AO has received reports from the courts on seven mandamus actions brought per the provisions of the Act. What follows is a summary of those mandamus actions, including the reasons provided by the appellate courts for their decisions in each of the cases.

In re: Oak Brook Bank, No. 06-2331 (7th Cir. May 12, 2006). Petitioner Oak Brook Bank sought a writ of mandamus in the United States Court of Appeals for the Seventh Circuit, pursuant to 18 U.S.C. § 3771(d), to preserve both its objections to a magistrate judge's restitution order and to its right to seek appellate review of that restitution order. In the underlying criminal fraud case, the magistrate judge to whom the issue had been assigned had recommended awarding certain victims various priorities over other victims. The district court then approved that recommendation, noting that Oak Brook lacked standing, under the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A(a)(1), to object to the report and recommendation. The appeals court determined that, while the petitioner may have lacked standing under the Mandatory Victim Restitution Act, the district court's order had not resolved the issue of Oak Brook's ability to participate in the restitution determination proceedings and had, in fact, invited arguments to assist in determining which persons should be considered victims. Since the district court's action had not denied the petitioner's right to be reasonably heard nor its right to a full and timely restitution under the Crime Victims' Rights Act, the appeals court denied the mandamus petition.

Kenna v. United States District Court for the Central District of California, No.05-73467 (9th Cir. January 20, 2006). Petitioner Kenna sought a writ of mandamus in the United States Court of Appeals for the Ninth Circuit, pursuant to 18 U.S.C. § 3771(d), requesting an order vacating a sentence imposed on a co-defendant in a fraud and money laundering case and commanding the district court to allow victims to speak at the re-sentencing. While the petitioner and several other victims of the crime had been provided an opportunity to submit written victim impact statements and to address the court directly at the sentencing of one co-defendant, the district court denied victims the opportunity to speak at the subsequent sentencing of the co-defendant. Noting that it had re-reviewed all the previously and currently submitted victim impact statements and the comments of the prosecutor and the defendant, the district court determined that there was nothing more that might be said that would have any impact on the

outcome. Focusing on "the right to be reasonably heard" language within § 3771(a)(4) and exploring the legislative history of the statute in that regard, the appeals court rejected the notion that the Act vested trial judges with discretion about how to receive the views of the victims. Rather, the court found clear congressional intent to give crime victims the "indefeasible" right to speak at all proceedings covered by the Act, thus making them full participants at those events. Concluding, therefore, that the district court committed an error of law by refusing to allow petitioner to allocute at the second sentencing, the appeals court issued the requested writ while affording the trial court the renewed opportunity to re-open the sentencing pursuant to § 3771(d)(5).

In re: W. Patrick Kenna. No. 06-73352 (9th Cir. July 5, 2006). Petitioner Kenna sought a writ of mandamus in the United States Court of Appeals for the Ninth Circuit, pursuant to 18 U.S.C. § 3771, to secure an order to the district court to release the entire presentence report of a criminal defendant by whom he had been victimized. The trial court, finding no language in the statute or legislative history upon which to base a general right for crime victims to obtain such disclosure and determining that the reasons for the request did not outweigh the ends of confidentiality traditionally associated with that document, declined to release such report noting further that the petitioner had refused to consider disclosure of specific portions of the presentence report. The court of appeals concluded that the district court had neither abused its discretion nor committed legal error and, thus, denied the petition for the writ of mandamus.

In re: Iouri Mikhel, No. 06-7336 (9th Cir. July 7, 2006). The United States, as petitioner, sought a writ of mandamus in the United States Court of Appeals for the Ninth Circuit to order the district court to permit certain crime victims to observe in its entirety the murder trial in which they were to testify, pursuant to the Crimes Victim's Rights Act (18 U.S.C. § 3771). The trial court, acting to prevent collusive testimony and to ensure proper courtroom decorum, had denied a government motion seeking to allow family members of the murder victims to so observe, limiting their presence at both guilt and sentencing phases until after they had testified. The appellate court concluded that the trial courts' exclusion of victim/witnesses was flawed because it had neither first determined whether their testimony would be "materially altered" (per § 3771(a)(3)) were they allowed to witness the entire trial nor had it considered whether there were "reasonable alternatives" (per § 3771(b)) that would enable those individuals to attend the trial. The Ninth Circuit thus granted the petition in part, remanding the matter back to the district court to consider whether clear and convincing evidence proves that the victim/witnesses' testimony will be "materially altered" if they are allowed to attend the trial in its entirety.

Williamson v. United States, No. 06-74584 (9th Cir. September 29, 2006). Petitioner Williamson, styling his filing as a petition for a writ of mandamus pursuant to 18 U.S.C. § 3771, complained of alleged crimes committed against him by the President, the Vice-President and several other government officials and sought a wide range of relief from the United States Court

of Appeals for the Ninth Circuit including an injunction requiring respondents "not to use microwaves on Petitioner." The appeals court, noting that no order had been identified by which the district court had denied Mr. Williamson rights provided by the Crimes Victims Rights Act, concluded that the petitioner's claims were not cognizable by writ of mandamus and, thus denied the petition.

In re: Edgar Searcy, No.06-14951-B(11th Cir. Sept. 15, 2006). Petitioner Searcy filed a "Petition for Writ of Mandamus to Enforce the Crime Victims Rights Act" through which he sought an order from the United States Court of Appeals for the Eleventh Circuit compelling the district court to enjoin Microsoft Corporation, America Online Corporation, and the Attorney General of the United States prohibiting same from "using software that violates the wire interception act." The trial court had dismissed the action filed below on res judicata grounds, finding it virtually identical to a prior case filed by decision subsequently dismissed by the appellate court for want of prosecution. Agreeing that the claims are barred by res judicata and concluding that the petitioner had not demonstrated that the District Court abused its discretion or that he is in anyway entitled any other relief, the Court of Appeals declined to issue the writ.

In re: Christopher Miller, No. 06-15182-B (11th Cir. Sept. 28, 2006). Petitioner Miller, seeking both a writ of mandamus pursuant to the Crime Victims Rights Act (18 U.S.C. § 3771) and a writ pursuant to the All Writs Act (28 U.S.C. § 1651), requested the appellate court to both investigate alleged criminal acts committed by Morris Communications and its officers and to ultimately indict those entities and individuals for the unlawful acts taken against the petitioner. He also sought an order for monetary damages. Noting that the petitioner already has an appeal pending in a similar case with a notice of appeal filed in another, the Court of Appeals declined to issue a writ stating first that mandamus is not a substitute for appeal and then concluding that the specific relief being sought is not available via mandamus. Further, even in the face of those otherwise appropriate reasons to deny the petition and even if the Crime Victims Rights Act could be construed to apply to the instant claims, there had been no showing that the district court had in any way abused its discretion or engaged in an usurpation of power.