

## Crime Victims' Rights Report 2014

### Summary – uscourts.gov

This is the tenth 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 62,700 criminal cases filed involving more than 81,000 defendants during fiscal year 2014. In the past year, the AO has received reports from the appellate courts on 8 mandamus actions brought per the provisions of the CVRA and has similarly identified 12 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.

In re: Estate of Arthur Barrett, No. 13-2481 (1st Cir. Dec. 31, 2013). Petitioner Barrett, as administrator for the Estate of Arthur Barrett, sought 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 manner in which her restitution claim was handled in the underlying case of *United States v. James J Bulger*, No. 1:99-cr-10371-DJC-3 (D.Mass. 2013). Because the government had already agreed in substance that restitution to victims would take priority over the government's right to forfeiture, the appellate court held that the district court did not abuse its discretion by refusing to do more under such circumstances. Although the petition for a writ of mandamus was denied, the appellate court noted that the government has a continuing obligation to attempt to collect full restitution for the crime victims.

*United States v. Tonawanda Coke Corporation et al.*, No. 1:10-cr-00219-WMS-HKS-l (W.D.N.Y. Mar. 14, 2014). Defendants were convicted of violations of the Clean Air Act and the Resource Conservation and Recovery Act that arose from the operation of coke ovens in the Tonawanda and Grand Island communities. Residents routinely saw black soot over their properties, and several community members were diagnosed with different types of cancer. The government filed a motion requesting a sentencing hearing to determine which individual community members were harmed by the illegal air pollution and thus, were crime victims under the CVRA. Balancing many factors, the court concluded that a sentencing hearing would be inappropriate. The court emphasized "the need to provide finality to the criminal proceedings in a manner that is fair and just, and to allow further efforts toward remediation, rehabilitation, and

accountability to move forward." The court also noted that the issues raised during a restitution hearing would be the same as those that are currently being considered in state court; that it would decline to award restitution because "the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution [would] outweigh the need to provide restitution to any victims"; that "the failure to designate individual victims will not adversely affect the manner in which numerous designated victims would be assured of the other rights afforded by the CVRA, such as the right to timely notice of public court proceedings, the reasonable right to confer with the attorney for the government, and the right to be reasonably heard at sentencing"; and that because it would not be making any determinations regarding actual damages resulting from the defendant's actions, neither the parties nor the community members would be negatively impacted in the ongoing state civil actions. For these reasons, the government's motion was denied.

In re: William C. Bond, No. 13-2462 (4th Cir. Dec. 6, 2013). In district court, petitioner Bond filed a motion for relief pursuant to the CVRA alleging "that the Maryland U.S. Attorney's Office is violating his rights under the Crime Victims' Rights Act, and the rights of all the citizens of Maryland, by failing to protect them from judicial misconduct of federal judges and misconduct by incompetent and unethical attorneys." Without discussion, the district court judge denied petitioner's motion by writing the word "denied" on the first page of the sealed motion in the underlying case of *United States v. Thomas L. Bromwell, Sr., et al.*, No. 1:05-cr-00358-JFM (D. Md. Nov. 21, 2013).

After the district court denied the motion, petitioner Bond sought a writ of mandamus in the United States Court of Appeals for the Fourth Circuit. The appellate court observed that petitioner had been named as an "interested party" in the case and had been attempting to intervene in the underlying case to unseal the record for several years. However, the appellate court found that petitioner was not a victim in the underlying criminal matter and therefore, did not qualify as a crime victim under the CVRA. Thus, the petition was denied.

*United States v. Allen G. Saoud*, No. 1:12-cr-00113-IMK-JSK (N.D.W. Va. Apr. 1, 2014) and *In re: The Bankruptcy Estate of AGS, Inc.*, No. 14-1296 (4th Cir. Apr. 4, 2013). In 2005, defendant Saoud was banned from participating in Medicare and Medicaid for a period of 10 years. To circumvent the ban, he executed a series of fraudulent transactions to maintain control of his medical practice, AGS Inc., and he continued to collect Medicare and Medicaid reimbursements. Eight years later, defendant was convicted on multiple counts of healthcare fraud and other offenses. The bankruptcy estate of AGS, Inc. sought over \$1,000,000 in restitution pursuant to 18 U.S.C. § 3771(a)(6) to cover creditor claims of overbilling from 2000 to early 2006, unpaid taxes from 2000 to 2004, and attorneys' fees. The district court declined to grant petitioner the requested restitution.

The bankruptcy trustee for AGS, Inc. petitioned the United States Court of Appeals for the Fourth Circuit for a writ of mandamus asserting the right to full and timely restitution.

Finding that AGS, Inc. served as a vehicle for the defendant to illegally obtain reimbursements from Medicare and Medicaid, the appellate court held that Medicare and Medicaid were the victims of defendant's criminal conduct, not the petitioner. The court further held that creditors' claims were at best "tangential" because the creditors were not directly and proximately harmed by the defendant's scheme to defraud Medicare and Medicaid. The appellate court also noted that the creditors' claims pre-dated the fraud perpetrated by the defendant. For the foregoing reasons, the petition was denied.

United States v. Allen G. Saoud. No. 1:12-cr-00113-IMK-JSK {N.D.W. Va. Sept. 18. 2014). Defendant Saoud was convicted of multiple offenses, including five counts of bankruptcy fraud. See supra. Robert Fraser was hired to perform accounting functions for AGS, Inc. and was named as a defendant in an adversarial proceeding brought by the bankruptcy trustee. He settled the lawsuit for \$10,000 and spent \$7,500 in attorneys' fees. In August of 2014, Fraser sought restitution from defendant Saoud pursuant to the CVRA. To receive restitution, Fraser would have to show that he was proximately harmed by the offenses that the defendant committed. Observing that Fraser incurred losses only after the adversarial proceeding was brought by the bankruptcy trustee, the court ruled that Fraser's losses were not proximately caused by the offenses for which the defendant was convicted. The court further noted that the request for restitution was untimely. For those reasons, restitution was denied.

United States v. Credit Suisse AG, No. 1:14-cr-00188 (E.D. Va. Sept. 29. 2014). Defendant pled guilty to committing tax fraud against the Internal Revenue Service by conspiring to assist clients in filing false tax returns. Movant Blixseth, who was involved in a separate lawsuit against defendant regarding a commercial real estate transaction, filed a motion asserting the right to be heard at sentencing and the right to restitution pursuant to 18 U.S.C. § 3771. To qualify as a crime victim, a person must be directly and proximately harmed as a result of the defendant's offense. In this case, the court determined that movant did not qualify as a crime victim because he was not harmed by the defendant's commission of tax fraud. Finding that the harm the movant suffered relating to a commercial transaction between private parties was "too attenuated from the offense of conviction," the court denied any claim to restitution or the right to be heard under the CVRA. However, noting its broad discretion to hear testimony from any person even if not statutorily required, the court granted Blixseth the opportunity to be heard by allowing him to submit a written statement to the court prior to sentencing. Thus, the motion to be heard was denied in part and granted in part.

In re: William Stephens, Director. Texas Department of Criminal Justice, Correctional Institutions Division, and Hilda Gonzales, sister of crime victim David Cardenas, No. 14-40109 (5th Cir. Feb. 7, 2014). In a death penalty case, defendant Vasquez filed a petition for a writ of habeas corpus in the Southern District of Texas in April of 2004 (see Vasquez v. Dretke, 7:04-cv-00143). The magistrate judge issued a Report and Recommendation (R&R) recommending

that the requested relief be denied. Eight years later, petitioners 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 rule on the pending R&R from the magistrate judge. While the petition was pending in the Fifth Circuit, the district court informed the clerk of the appellate court that a ruling would be handed down on February 10, 2014. Based on the district court's assurance, the appellate court denied the petition for a writ of mandamus without prejudice.

United States v. Citgo Petroleum Corporation, et al., No. 2:06-cr-00563 (S.D.Tex. Apr. 30, 2014) and In re: Jewell Allen, et al., No. 14-40505 (5th Cir. May 19, 2014). Previously, a petition for a writ of mandamus was granted by the United States Court of Appeals for the Fifth Circuit directing the district court to hear arguments from the petitioners' pro bono counsel regarding their status under the CVRA.<sup>1</sup> On remand, the district court recognized the petitioners as crime victims and allowed them to submit additional documentation regarding their request for restitution to cover lifetime medical monitoring.

The district court held hearings, received hundreds of victim impact statements, and heard oral testimony from 90 individuals. Noting that, under the Victim and Witness Protection Act (VWPA), a court does not have to order restitution if "the complication and prolongation of the sentencing process" outweighs the need to provide restitution, the district court declined to award restitution. Petitioners 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) challenging the district court's denial of restitution. Finding that the district court did not err when it invoked the exception set forth in the VWPA, the appellate court declined to grant petitioners a writ of mandamus.

United States v. Brandy M. Wheeler, 4:08-cr-00216-FJG (W.D. Mo. Jan. 3, 2014). Defendant Wheeler obtained assets with embezzled proceeds and allegedly disposed of them prior to sentencing. Movants Womack and VCW Holding Company LLC filed a motion for victims' rights enforcement pursuant to 18 U.S.C. § 3771(d)(3), seeking retroactive modification of the restitution conditions. The court determined that the first movant, Ms. Womack, was not a victim of the underlying offense, and therefore, lacked standing to file a motion for victims' rights enforcement. The second movant, VCW Holding Company, LLC, was the victim in this case and had been previously awarded restitution. The original restitution order included the amount of embezzled funds used to obtain assets that the defendant disposed of prior to sentencing. Insofar as VCW Holding Company, LLC was complaining that the government should have seized some of the assets, the court ruled that victims do not have a right to forfeiture under the CVRA. Accordingly, the motion for victims' rights enforcement was denied.

---

<sup>1</sup> See Letter from Honorable Thomas F. Hogan, Director, Administrative Office of the U.S. Courts, to Honorable Joseph R. Biden, Jr., President, United States Senate (March 14, 2013).

United States v. Henry Carl Christopher Rahr, V, 2:14-cr-00050-NJ (E.D. Wis. Apr. 3, 2014) and In re: Daniel Storm, No. 14-1785 (7th Cir. Apr. 11, 2014). Defendant pled guilty to testifying falsely and entered into a plea agreement with the government. Petitioner Storm filed a motion to reopen the plea or, in the alternative, offer a victim-witness impact statement. Determining that the plea agreement was between the defendant and the government, the court first ruled that a third party could not intervene to reopen the plea agreement. The court then noted that 18 U.S.C. § 3771 confers rights to victims that are harmed as a result of a federal offense, and asked the government and the defendant to advise the court about whether petitioner was a victim of the offense in this case. Both argued that petitioner was not directly and proximately harmed by the defendant's false testimony, which occurred a year before petitioner met defendant. Consequently, the district court ruled that the petitioner was not a victim in this case. Pursuant to the CVRA, petitioner sought a writ of mandamus in the United States Court of Appeals for the Seventh Circuit. Without comment, the panel denied the petition for a writ of mandamus. Petitioner sought a rehearing en banc, which was also denied.

In re: K.K., No. 14-71875 (9th Cir. July 1, 2014). Petitioner sought a writ of mandamus in the United States Court of Appeals for the Ninth Circuit, pursuant to the CVRA, challenging the district court's partial denial of motions to quash two subpoenas duces tecum in the underlying case of United States v. Gerard K. Puana, No. 1:13-cr-00735-LEK-1 (D. HI 2014). To issue a writ, the appellate court must find that the district court abused its discretion or committed legal error. Determining that the information the defendant requested met the standards for issuance of Federal Rule of Criminal Procedure 17(c) subpoenas and further finding that the district court balanced the privacy interests of the victim against the defendant's right to defend himself at trial, the court held that there was no abuse of discretion or legal error. Although the petition for a writ of mandamus was denied, the appellate court determined that the sensitive nature of the documents required an in camera review by the district court. After review, the district court could place additional limitations on defense counsel's use of the documents, if necessary.

United States v. Crutchfield, 5:14-cr-00051-DLJ (N.D. Cal. June 6, 2014). In a sex trafficking case, the government challenged the court's issuance of ex parte subpoenas requested by the defendant because no notice was given to the victims as required in Federal Rule of Criminal Procedure 17. The court granted the government's motion in part, saying that the CVRA gives the government standing to assert victims' rights. However, the court then went on to explain that Rule 17(c)(3) does not require notice to victims in cases of "exceptional circumstances," which includes information that may reveal the defense trial strategy. Concluding that the government was mistaken about Rule 17 notice requirements, the court denied the request for disclosure of the subpoenas and the request for a reasonable time to file a motion to quash without prejudice, but granted a temporary stay of the date of compliance with

the subpoenas. In addition, the court ordered the defendant to submit an ex parte brief identifying the exceptional circumstances that justify foregoing the Rule 17(c)(3) notice requirements.

United States v. Laura Evet Lambden. 3:13-cr-00294-JO-1 (D. Or. Sept. 15, 2014). Defendant pled guilty to transporting a minor across state lines for prostitution. The victim appeared at the sentencing hearing to assert her right to be heard under 18 U.S.C. § 3771(c)(1) and provide a victim impact statement. As the court ordered the victim to take the stand, the assistant U.S. attorney objected, arguing that the victim was exercising her right to be heard under the CVRA and should not be put under oath or subject to cross-examination. The court reiterated that the victim's testimony should be given under oath. At that point, the victim became a witness and was no longer exercising her right as a crime victim. The court provided the following explanation: "My feedback is that 18 U.S.C. § 3771(c)(1) does not establish an absolute right to make a victim impact statement without being sworn or submitting to cross-examination. I chose to take the victim's statement under oath and permit cross-examination because I had questions about her credibility and the weight I should give her impact statement in reaching an appropriate sentence."

United States v. Jerad Nicholas Martin. 2:13-cr-6061-LRS (E.D. Wash. May 29, 2014). Defendant pled guilty to receipt of child pornography. A day before sentencing, the U.S. Attorney's Office received a letter on behalf of a victim requesting restitution or, in the alternative, a continuance. Although the victim was in a videotape possessed by defendant, there was no other connection between the victim and the defendant. Both the United States and defense counsel argued that the victim's request was not timely. Agreeing, the court denied the request for restitution and the request for a continuance.

United States v. Leslie Lyle Camick, 6:13-cr-10042 (D. Kan. Feb. 19, 2014). After charges of mail fraud, wire fraud, and identity theft were filed against defendant Camick, he filed a separate federal civil rights action against some of the anticipated witnesses, who were also victims of his crimes. Following his civil suit, the government filed a superseding indictment adding a count of witness retaliation. A jury found defendant Camick guilty of all charges. The court dismissed defendant Camick's civil suit, but he continued to litigate the action by filing eight additional motions.

Pursuant to 18 U.S.C. § 3771(a)(1) and (c)(1), the government filed a motion on behalf of the victims asserting the right "to be reasonably protected from the accused." The government sought to bar defendant Camick from "filing any other pleadings" in the civil case and "from filing any court actions or pleadings relating to any of the defendants in that case." In its request, the government noted that the VWPA authorizes the use of injunctions against witness harassment. The court observed that injunctive relief is granted to prevent future harm. Reasoning that the injury to the victims from the civil suit had largely occurred, that responses to

the post-dismissal motions had already been filed, and that the litigation was likely coming to an end, the court ruled that the government had not shown that future harm is likely to occur. Accordingly, the court provisionally denied the government's request for injunctive relief. However, the court warned defendant Camick that any future attempts to litigate against the victims of the civil action or intimidate witnesses in the present criminal action may cause the court to grant the relief sought by the government. The court further warned defendant Camick that any continued retaliatory conduct on his part may be taken into account at his sentencing.

United States v. Todd S. Farha, et al., No. 8:11-cr-00115 (M.D.Fla. May 29, 2014) and In re: Wellcare Health Plans, Inc., No. 14-12422-B (11th Cir. Jun 13, 2014). Petitioner Wellcare was charged with conspiring to defraud Florida healthcare programs through its former officers and employees. After the company entered into a deferred prosecution agreement, five former executives of the company were indicted on charges of conspiracy, making false statements, and healthcare fraud. Shortly thereafter, petitioner Wellcare was designated as an unindicted co-conspirator in the defendants' fraud by the government. After four of the defendants were found guilty of fraud and/or making false statements, petitioner Wellcare sought victim status and restitution pursuant to the CVRA and the Mandatory Victims Restitution Act (MYRA). According to the CVRA and the MYRA, a victim is a "person directly and proximately harmed as a result of the commission of a federal offense." The district court noted that petitioner was not directly harmed by the defendants' offenses, and that its losses were collateral. For that reason, the district court declined to recognize petitioner Wellcare as a victim and denied restitution.

Petitioner sought a writ of mandamus in the United States Court of Appeals for the Eleventh Circuit, pursuant to 18 U.S.C. § 3771 and 18 U.S.C. § 3663A, directing the district court to recognize petitioner Wellcare as a victim and award restitution. The appellate court observed that "A person accused of the crime may not obtain any form of relief under this chapter." 18 U.S.C. § 3771(d)(1). Concluding that petitioner Wellcare was a co-conspirator based on its admission in the deferred prosecution agreement, the appellate court held that the district court did not abuse its discretion when it declined to recognize petitioner as a victim and award restitution. Thus, the petition was denied.

In addition to the cases listed above, the U.S. Courts of Appeals for the D.C. Circuit and the Eighth Circuit notified the AO that they each remanded a case back to a district court to redetermine restitution in light of the Supreme Court's opinion in *Paroline v. United States*, 134 S. Ct. 1710 (Apr. 23, 2014). Both cases are currently pending. If any victims' rights are denied, we will include that information in future reports.