

Crime Victims' Rights Report 2007

Summary – uscourts.gov

This is the third of the annual reports 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 247 of title 18, and the result reached." *Id.* In the federal trial courts there were more than 68,400 criminal cases filed involving more than 89,300 defendants during fiscal 2007. In the past year, the AO has received reports from the appellate courts on four mandamus actions brought per the provisions of the Act and has similarly identified four district court cases that meet the statute's reporting criteria.

A summary in chronological order of those mandamus and trial court actions follows, including the reasons provided for the decisions in each of the cases. Two additional reports of criminal cases that had been decided during the previous reporting period were forwarded recently to the AO; summaries of those matters are also included.

United States v. Kevin L. Koetz, No. 05-CR-234 (E.D. WI. March 13, 2006). The United States moved to reopen a sentencing, pursuant to 18 U.S.C. § 3771, after it had discovered that a victim of one of the armed robberies to which the defendant had entered a plea had been misinformed as to the time of the initial sentencing event. The government had previously notified the victim of the time and place for her to provide a victim-impact statement, but failed to inform either the victim or the victim-witness office that the Court had rescheduled the proceeding. While seeking the opportunity for the victim to exercise her right to make a statement and while informing the Court that counsel for the defendant had no objection to the requested reopening, the United States asserted that it would not be recommending that the Court alter the sentence previously imposed. The Court, per Margin Order, denied the government's motion.

United States v. L.M., No. 06-CR-18 {N.D. IA. March 31, 2006}. In a juvenile delinquency proceeding charging a minor with having distributed heroin the use of which, in turn, resulted in the death of another juvenile, the government sought, among other things, to provide the victim's family with notification of and access to the various hearings to be convened. The Court concluded that the Crime Victims' Rights Act only applies to "public" court proceedings and held that the pending Transfer Hearing was not such a public event. Thus, while the victim's family would be notified of the proceedings against the juvenile, the hearing on whether to transfer him to adult status would be closed to the public and to the family members.

The government was directed to inform the victims of their rights under the act including their right to appeal the instant order.

In re: Edgar Searcy, No. 06-7703 (4th Cir. October 6, 2006). Petitioner Searcy sought a writ of mandamus in the United States Court of Appeals for the Fourth Circuit, pursuant to 18 U.S.C. § 3771(d), asserting that he had been denied the right to obtain restitution for a crime of violence perpetrated against him by a fellow federal inmate. His underlying civil RICO conspiracy suit seeking restitution and damages had been dismissed by the district court, adopting the recommendation of the magistrate judge that petitioner had no Crime Victims' Rights Act claims where, as in this instance, no criminal prosecution had been initiated by the government against the alleged perpetrator. The appellate court denied the petition for mandamus relief noting that the complainant was not entitled to the protections of 18 U.S.C. § 3771 in his civil RICO proceeding and, if he was dissatisfied with the district court's dismissal of the complaint, review of that disposition could have been obtained by appeal.

In re: Russell P. Butler, No. 06-20848 (5th Cir. November 1, 2006). Petitioner Butler, on behalf of himself and others, sought a writ of mandamus in the United States Court of Appeals for the Fifth Circuit, pursuant to the Crime Victims' Rights Act ("CVRA"), asking the appellate court to reverse and remand the decision in *United States v. Jeffrey Skilling and Kenneth Lay*, granting the motion of defendant Lay's estate to vacate his conviction and dismiss his indictment. The court of appeals, referencing the doctrine of abatement recently recognized in *United States v. Estate of Parsons*, 367 F.3d 409 (5th Cir. 2004) (en bane) as providing the grounding for the district court's order, found nothing in the CVRA that purports to exempt the provisions of the act from the venerable doctrine which mandates that the conviction of a defendant who dies before he has the opportunity to appeal is to be expunged. Since defendant Lay had no longer been convicted and since the CVRA does not grant victims any rights against individuals who have not been convicted of crime, the court of appeals denied the petition.

United States v. Jeremy Sharp, No. 3:06cr182 (E.D. VA. November 22, 2006). Defendant pled guilty to conspiracy to possess with intent to distribute marijuana. At sentencing, a woman who claimed she had been physically, mentally and emotionally abused by an alleged customer of the defendant sought permission to provide a victim impact statement pursuant to the provisions of the Crime Victims' Rights Act. Concluding that the claimant was unable to demonstrate that the harm she may have suffered was a foreseeable consequence of the defendant's drug conspiracy nor was it an essential element for accomplishing his criminal acts, the Court held that those injuries were not the direct and proximate result of the offense of conviction. Thus the woman was not a victim under the provisions of 18 U.S.C. § 3771 and was not permitted to offer a victim's impact statement.

In re: Dominic Sabbia, No. 07-1368 (7th Cir. February 21, 2007). Petitioner Sabbia sought a writ of mandamus under the Crime Victims' Rights Act, 18 U.S.C. § 3771 in the Court of Appeals for the Seventh Circuit asserting that the Department of Justice had denied him the rights afforded under the act because three individuals (a former business partner and two associates) had used the Circuit Court of Cook County and the Bankruptcy Court for the Northern District of Illinois to defraud him. His claims of fraud relate to a state court proceeding brought by the former partner for dissolution of the partnership (and other matters) and the petitioner's subsequent failed attempts to overturn various state court judgements in the federal district and bankruptcy courts without directly appealing those state rulings. Noting that the act was not implicated because no criminal proceedings were ever initiated in the district court and commenting that it possessed no power or authority to order the Department to prosecute the wrongs the petitioner feels he has suffered, the court of appeals labeled the request frivolous and denied the petition. Additionally, the court concluded that the petitioner's history of frequent frivolous filings merited a warning that repeating such activity will subject him to monetary fines and a possible bar order forbidding his filing of any further legal papers in any court within the circuit.

United States v. Scott Sacane, No. 3:05cr325 (D. CT. March 28, 2007). Defendant entered a plea of guilty to violation of the Investment Advisors Act of 1940. In advance of a hearing to address restitution issues, representatives of the funds that had incurred losses as a result of the fraudulent activity moved for an order requiring the defendant to provide detailed financial disclosure of assets and holdings per § 3771(a) of the Crime Victims' Rights Act. Analogizing to decisions denying victims access to information contained within a presentence report, the Court concluded that the act does not grant a right to discover financial information directly from a defendant. Moreover, the Court noted that, while the act provides an opportunity for victims to be heard, information on which to base their input in that regard is to be obtained from the prosecution. Since the government had already sought many of the same documents sought in the victims' petition, there existed no reason to bypass that process. The motion was denied.

United States v. Citgo Petroleum Corp., No. C-06-563 (S.D. TX. August 8, 2007). Alluding to its duties under the provisions of the Crime Victims' Rights Act (18 U.S.C. §3771), the government moved to unseal the Submission in Aid of Sentencing that it had previously forwarded to the United States Probation Office. In denying the motion, the Court noted the longstanding practice and sound policy regarding the treatment of presentence investigation reports as confidential and thus not public documents, citing *United States v. Huckaby*. 43 F.3d 135, 137 (5th Cir. 1995). Also per *Huckaby*, while disclosure might be allowed upon the showing of a compelling, particularized need, the Court held that the requisite showing had not been made. Finally, while the document to be unsealed here was not the actual presentence report, it contained information of the same type and character that is normally found in such reports and, thus, the same considerations were to be applied.

In re: Jane Doe, No. 07-1705 (4th Cir. August 9, 2007). Petitioner Doe sought a writ of mandamus in the United States Court of Appeals for the Fourth Circuit, pursuant to the Crime Victims' Rights Act, 18 U.S.C. §3771, arguing that the district court had wrongly denied her the right to full and timely restitution for injuries caused by the Purdue Frederick Company, Inc., the manufacturer of the prescription painkiller OxyContin. Purdue had entered a plea to a single count of misbranding with intent to defraud and had agreed with the government to pay fines, penalties and restitution to a limited number of entities affected by its conduct. The district court had rejected petitioner's claim that she had been harmed as a result of using the drug, finding no legal basis to support the related motion. After discussing the competing standards of review to be applied for mandamus petitions, the appellate court concluded that the petitioner was not legally entitled to any relief in this matter even under the lower standard authorized by §3771. Finding that the petitioner had not proffered in any of her pleadings any evidence from which to conclude that she suffered "direct and proximate" harm from the defendant's misbranding of OxyContin, the court of appeals opined that she did not qualify as a victim under the relevant restitution statute (the Victim and Witness Protection Act, 18 U.S.C. §3663). Even though the petitioner may have been injured or harmed by activities related to the crime, such is not sufficient by itself to support the application of §3663 restitution via the Crime Victims Rights Act. The petition for a writ of mandamus was denied.

United States v. David McQuillan, No. 07 Cr. 17 (S.D.N.Y. September 26, 2007). As part of his guilty plea to two counts of securities fraud, the defendant and the government agreed that neither the amount of loss attributable to the criminal conduct nor the amount of gain stemming therefrom could be reasonably determined. While as a consequence of that stipulation the probation office did not recommend that any restitution be imposed, two individuals asserted that they were victims of the defendant's conduct and sought restitution (both per the Crime Victims' Rights Act, 18 U.S.C. §3771(a)(6), and the Mandatory Victim Restitution Act, 18 U.S.C. §3663A(c)(1)(A)(ii)) for the monies that they would have had had they never invested in the defendant's company. The Court denied the motion noting that restitution does not apply where the need to provide same to any victims "is outweighed by the burden on the sentencing process," citing 18 U.S.C. §3663A(c)(3)(B). After considering the stipulation as to gain and loss, the complexity of the causation issues therein involved, the difficulties in locating and awarding restitution to the remaining millions of purchasers and other matters, the Court concluded that the burden from those factors would complicate and prolong the process to an extent that any need to provide restitution was negated.