

White Collar Crime - USA

Crime Victims Start to Assert Their Rights

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May 30 2006

Crime victims have statutory rights guaranteeing them participation in the criminal justice process for crimes committed against them. The Crime Victims' Rights statute,⁽¹⁾ effective October 2004, establishes the following rights for crime victims:

- the right to be reasonably protected from the accused;
- the right to be notified of the defendant's parole proceeding or release from custody;
- the right to attend and be heard at any court proceeding involving release, plea, sentencing or parole;
- the right to confer with the prosecutor;
- the right to full and timely restitution; and
- the right to proceedings free from unreasonable delay.

The Crime Victims' Rights Act requires government prosecutors and investigators to ensure that crime victims are notified of, and afforded, the rights set forth in the statute. In addition, crime victims may assert their rights by filing a motion in the district court in which the defendant is being prosecuted or in the district where the crime occurred. If the district court denies the motion, a crime victim may petition the court of appeal for review of that denial, and the court of appeal must rule on that petition within 72 hours. In an appeal from the underlying criminal case, the government may assert as error a district court's denial of any crime victim's right in the criminal case to which the appeal relates.

Crime victims have sought to enforce the rights guaranteed to them under the Crime Victims' Rights Act. In *Kenna v US District Court for the Central District of California*⁽²⁾ a crime victim sought to speak at the sentencing of the defendant, but the district court denied him that right, ruling that he had already permitted crime victims to speak at the sentencing of a co-defendant and did not believe anything further could be said that would have an impact on the defendant's sentence.⁽³⁾ Crime victim Kenna petitioned the Ninth Circuit Court of Appeal for a writ of mandamus, seeking an order vacating the defendant's sentence and commanding the district court to allow the victims to speak at resentencing.⁽⁴⁾

The Ninth Circuit granted the petition for mandamus. Looking at the legislative history of the Crime Victims' Rights Act, the court held that there was clear congressional intent to give crime victims the right to speak at a sentencing, not just to be heard.⁽⁵⁾ The Ninth Circuit further noted that the Crime Victims' Rights Act "was enacted to make crime victims full participants in the criminal justice system".⁽⁶⁾ Finally, recognizing the novelty of full victim participation in the criminal justice system, the Ninth Circuit provided this guidance:

"As victim participation in the criminal justice system becomes more common, we expect [Crime Victim Rights Act] claims to become more frequent, and thus encourage district courts to modify

their own procedures so as to give full effect to the [act]."(7)

Kenna underscores the power that crime victims have now been given in the criminal justice system in the United States. The assertion of these rights by crime victims could have a significant effect on the handling of criminal investigations and prosecutions. Could a crime victim file a motion seeking to force a prosecutorial decision on the basis that the proceedings have not been "free from unreasonable" delay? (8) What about forcing the attorney for the government "to confer" with the crime victim?(9) While it remains to be seen how the courts will answer these questions, it is clear that the criminal justice system now has another player armed with the tools to cause quite an impact on criminal investigations and prosecutions.

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Endnotes

(1) 18 USC § 3771.

(2) 435 F 3d 1011 (9th Cir 2006).

(3) *Kenna*, 435 F 3d at 1013.

(4) *Id.*

(5) *Id* at 1016.

(6) *Id.*

(7) *Id* at 1018.

(8) See 18 USC § 3771(a)(7).

(9) See 18 USC § 3771(a)(5).