

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-12707-G

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 17 2011

JOHN LEY
CLERK

In re: INSTITUTO COSTARRICENSE DE ELECTRICIDAD,

Petitioner.

No. 11-12708-G

In re: INSTITUTO COSTARRICENSE DE ELECTRICIDAD,

Petitioner.

On Petition for Writ of Mandamus to the United States
District Court for the Southern District of Florida

Before: WILSON and MARTIN, Circuit Judges

BY THE COURT:

As an initial matter, the Court, sua sponte, consolidates the petitions for writ of mandamus docketed in case numbers 11-12707 and 11-12708.

Petitioner seeks a writ of mandamus pursuant to the Crime Victims' Rights Act, 18 U.S.C. § 3771(d)(3). In reviewing a petition for a writ of mandamus under

§ 3771(d)(3) we must determine "whether the district . . . base[d] its decision on findings of fact that are clearly erroneous . . . [and] if not, [whether] it misappl[ied] the law to such findings." In re Stewart, ---F.3d---, 2011 WL 2023457, at *3 (11th Cir. 2011). "To prevail [under the CVRA], a victim must demonstrate some injury . . . caused by the offender's crime." Id. The CVRA defines a "crime victim" as "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia." 18 U.S.C. § 3771(e); see also In re Stewart, 552 F.3d 1285, 1288 (11th Cir. 2008) (explaining that if "criminal behavior causes a party direct and proximate harmful effects, the party is a victim under the CVRA").

The district court did not clearly err in finding that "Instituto Costarricense de Electricidad" ("ICE"), here seeking to be deemed a "crime victim," actually functioned as the offenders' coconspirator. The district court identified the pervasive, constant, and consistent illegal conduct conducted by the "principals" (i.e. members of the Board of Directors and management) of ICE, the organization claiming status as a victim under the CVRA. Neither did the district court err in finding that ICE failed to establish that it was directly and proximately harmed by the offenders' criminal conduct. Cf. United States v. Lazarenko, 624 F.3d 1247, 1252 (9th Cir. 2010) ("[A]s a general rule, a participant in a crime cannot recover restitution.").

Petitioner's Petitions for Writ of Mandamus are DENIED. The Motion to Extend the 72 hour deadline established by 18 U.S.C. § 3771(d)(3) is also DENIED.