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VICTIMS' CONSTITUTIONAL RIGHTS - ENFORCED BY THE COURTS

by Jay C. Howell

In 1988, 90% of the voters in our state approved a constitutional amendment for crime victims. Since then, there has been much argument among legal scholars and crime victim advocates concerning the legal meaning of these new rights. The language of our constitutional amendment was pretty straightforward - the crime victim has the right to be informed, present, and heard, when relevant, at the crucial stages of criminal proceedings. Along with the enactment of this constitutional language, the Florida legislature passed a series of state statutes which interpreted the general meaning of the amendment and gave specific and clearly identifiable rights to those who have been victims of crime. One of the most important rights provided to crime victims was information, in advance, about the upcoming hearings and other important court activity in the criminal case.

When a new constitutional amendment is adopted, it is often unclear as to what interpretation and ultimate meaning the courts will give to the new language. Now, fourteen years after the passage of the amendment, the decisions of our Florida appellate courts are providing some clear direction in interpreting these provisions.

In Palm Beach County in 1998, a ring of jewel thieves were apprehended and prosecuted. There were several victims whose losses ranged from 63 dollars to 3.4 million dollars. Some of the defendants decided to plead guilty. The State Attorney offered to drop the charges against some of the thieves in response to the guilty pleas of others. Five days prior to the plea and sentencing hearing, the State Attorney mailed a letter to the victims notifying them of the hearing. Four days after this notice was placed in the mail, one of the victims filed a motion objecting to the obviously short notice. Nonetheless, the trial

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court judge went ahead with the hearing and accepted negotiated pleas from two of the defendants and the dismissal of the charges against a third defendant. Negotiated pleas are normally those in which the State Attorney has offered a particular sentence and the defendants have agreed.

Ten days after the hearing, the victims requested that the court declare the negotiated pleas null and void because of insufficient notice to the crime victims. Nonetheless, the trial court went ahead and sentenced two of the defendants to ten years in prison. The only likely source of restitution in the case was the sale of property that was seized and forfeited by the defendants. The State, the court, and the defendants had agreed that this property was to be distributed to the victims in equal amounts, regardless of the loss suffered by the individual homeowners.

One of the victims relied upon the provisions of the Florida constitutional amendment for crime victims which requires that victims of crime have the right to advance notification concerning judicial proceedings and the right to be present at such. Crime victims also have the statutory right to request restitution - repayment for their losses.

One of the crime victims appealed the decision of the trial judge. The issue for the court was whether the victims had been denied their rights and, if they had, whether the appeals court would order the negotiated pleas withdrawn, forcing the state and the defendants to start over. The appeals court concluded that the victim was denied her constitutional rights. The negotiated pleas were voided and the case was sent back to the trial court to provide adequate notice to the crime victims. This case is extremely significant and will be studied by other courts and other states because it stands for the principle that if the victims' rights are violated, then the procedure itself is faulty, and the trial court can be forced to withdraw previously entered pleas of guilty in order to enforce the rights of crime victims.

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The case is *Ford v. State of Florida, Valdez, Marshall, and Marshall*. The opinion was filed on July 31, 2002, and the case can be found at 27 Florida Law Weekly, D1740(c). It should be noted that the State of Florida, Office of the Attorney General, after the above appellate decision was rendered, asked for a rehearing in front of all the judges in the Fourth District Court of Appeal. As of press time, no decision had been made as to whether or not the appeals court will hear this case again.