

Robert H. Cleland
Eastern District of Michigan

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Appointed by: President George H.W. Bush, 1990.

Legal Education: University of North Carolina, J.D., 1972.

Prior Legal Experience: Law Offices of Delmer L. Cleland 1972-75.

Government Service: Assistant County Prosecutor 1972-75; Chief Trial Attorney 1975-77; Chief Assistant 1977-80; Prosecuting Attorney 1981-90.

Background and Reputation in the Legal Community

Judge Cleland was a career prosecutor before taking the bench. He began as an assistant prosecutor in the Port Huron office and worked his way up to Chief Trial Attorney, Chief Assistant, and then Prosecuting Attorney for the county. He also served as president of the Prosecuting Attorneys' Association of Michigan for two years. Over the years, Judge Cleland has volunteered for a number of community groups including the Port Huron Hospital, the United Way of St. Clair County, Civic Theater of Port Huron, the YMCA, and the First Congregation Church.

Lawyers rate Cleland as a good judge in terms of ability and demeanor. Comments included: "He has good legal abilities." "He's an interesting mix. He is the most conservative, but he is really intelligent. He is very fastidious, well-prepared and timely." "His ability is good, not great." "His ability is middle-of-the-road. His orientation gets in the way." Plaintiff's attorneys complain that Cleland leans towards corporate parties in civil matters and they try to avoid him. On the other hand, civil defense lawyers recognize he is "a good conservative judge," and that "he is heavily defense oriented."

Criminal defense attorneys believe that Cleland heavily favors the prosecution. "He is extremely government-oriented." On sentencing, lawyers similarly commented that, "He is hard on sentencing. He's tough, but I've seen him give people breaks too. He really sentences at the top; he may be the top." "He is the most, or second most, conservative judge."

In 1997, sitting by designation on the 6th Circuit, Cleland authored an opinion holding that overweight Ohio state troopers did not have a cause of action under the American with Disabilities Act because their physical condition was not a physiological condition that should be considered an impairment under the law.

Venton Dale Talley

Charge: Conspiracy to Distribute Crack Cocaine.

Sentence: 240 months.

Projected Release Date: June 2, 2014.

In 1996, at age twenty two, Venton Dale Talley ("Dale") was arrested for his involvement in a crack cocaine conspiracy in Northern Michigan. A cooperating witness, William Davis,

arranged a buy between Dale and undercover officers for about three ounces of crack cocaine. Dale, who lived in Detroit, drove up to Saginaw with the drugs to make the deal. The transaction was in progress when Dale was arrested.

Dale went to trial and offered an entrapment defense. He argued that actually, William Davis was the supplier and that Dale had agreed to be the “drop off” man for the deal only because Davis had badgered him into helping. The jury rejected this defense.

At sentencing, relevant conduct was assessed at approximately 4 _ ounces of crack cocaine, based upon the informant’s estimates of their dealings over the relevant period of time. Dale contested this amount but the judge sided with the government.² Dale’s offense level was also increased when Judge Cleland followed the probation officer’s recommendation that Dale be considered an “organizer, leader, manager or supervisor.” While the evidence on this issue was not overwhelming, the court relied on testimony including that Dale appeared to be the person negotiating during the controlled buy, that one of his co-conspirators referred to himself as “D’s boy,” that several people drove Dale around in their cars,³ and that Dale instructed his friend after both were caught to make no statements to the police.



In addition, while not requested by the prosecution or recommended by the probation officer in the PSI, Judge Cleland decided to increase Dale’s offense level by two points for obstruction of justice, based upon his conclusion that Dale’s testimony was “not truthful in a number of respects.”⁴ The resulting offense level when combined with Dale’s Criminal History Category III resulted in a Guideline range was 293 to 365 months.⁵

At sentencing, Dale’s attorney highlighted Dale’s rough past as a way of understanding his involvement in this offense:

But I do think we have a 22-year old here who it’s correctly noted in the report has not had an easy life, who was raised by other people, whose family situation was

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There was corroborating evidence of Dale’s involvement in the conspiracy including the controlled buy and police surveillance including taped phone conversations. Sent. Tr. at 8-14. With regard to relevant conduct, Davis was the key source, and he gave different estimates of the total quantity. The probation officer chose the lesser of Davis’ estimate but the judge rejected Dale’s argument that Davis lacked any credibility, given his self interest and his changed testimony. Id. at 16-18. (Davis testified at trial that although he was serving a twenty year drug sentence, because of his cooperation, the government had committed to recommend that time be halved).

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Dale’s explanation for this fact was that he did not have a driver’s license at the time. Sent. Tr. at 10.

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Sent. Tr. at 19. Specifically, the judge believed that Dale attempted to make himself look like a novice in the drug business to support his entrapment defense and that he gave misleading answers regarding money found on his person. The judge also based his decision on his assessment of Dale’s demeanor, commenting that Dale appeared to approach his testimony “as though it was play time.” Sent. Tr. at 22.

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Dale had a few misdemeanor convictions aggravated by a probation violation. One conviction was for the reckless discharge of a firearm resulting from an accident that left a good friend of Dale’s dead.

appalling, who more or less has had to survive on the streets in a poor environment. . . . Dale Talley doesn't deserve the type of sentence I believe this court's going to say it has no choice but to give, and I would ask the court please have some leniency in this case.⁶

After making the upward adjustments to Dale's offense level that Judge Cleland felt were required by the law, he responded to these comments by saying:

. . . I frankly regret that the guideline range here is so high and that an upward adjustment has such a proportionately greater impact on this defendant It is a severe impact, there is no doubt about that, that's a function of the underlying criminal behavior and substantially the function of the amount of crack cocaine the defendant was convicted of -- well, not convicted of but for which he was found responsible.⁷

On his first appeal, the Sixth Circuit reversed Judge Cleland on the supervisory role issue, entitling Dale to a resentencing.⁸ Upon remand, Judge Cleland was first inclined to again sentence Dale to 292 months, which would have been the top end of the revised, somewhat guideline range. Ultimately, however, he settled on 240 months, near the bottom of the new range.⁹ In his second appeal, Dale argued he was entitled to further relief under the Supreme Court's *Apprendi* opinion which requires that a jury to make findings on the drug quantity necessary to trigger higher statutory maximums. While his jury did not make these findings, the maximum sentence under the portion of the statute that does not require a specific jury verdict was twenty years. Thus, because Dale's new Guideline sentence was at the legal statutory maximum, the Court held that no further resentencing was required.¹⁰

In 2004, responding to a draft of this profile, Judge Cleland wrote

As I understand, you aim to point out to the public, cases in which the judge was, in essence, forced by the guidelines to meet out a sentence in excess of what he would otherwise have done. My comments . . . sound as though I adopted such a position in that case, but I do not think that Talley provides a very good example of the situation you are trying to illustrate. To be sure, there have been many cases in which I have had that reaction; I just don't think Talley was one of them....I believe that the "regret" I expressed at sentencing was limited to the usually large number of months that resulted from the perjury adjustment.¹¹

Judge Cleland also wrote that he believes his sentencing decisions are comparable to others in his district and that his reputation as a tough sentencer is an "echo chamber effect" reverberating from his earliest sentencing decisions between 1990 and 1992 (some of which were reversed).

6 Sent. Tr. at 28-29. In the three years preceding his arrest, Dale also admitted that he had regularly used cocaine and marijuana.

7 Sent. Tr. at 25.

8 See *United States v. Talley*, 1999 WL 685938, at *6 (6th Cir. 1999).

9 See *United States v. Talley*, 2001 WL 814936, at *6 (6th Cir. 2001).

10 Id.

11 December 16, 2004 from Judge Cleland to author at 1 (on file with author).

Dale has a young daughter who is being cared for by her mother, over four hundred miles from where he is serving his time.

Compiled from PSI, Sentencing Transcript, appellate opinions, PACER docket sheet, inmate letters, letter from judge.