

**J. Phil Gilbert**  
**Southern District of Illinois**

*And it's a very harsh sentence, but that is, as I said, not for me to decide, but I want you to know that it's not easy on this Court to impose a life sentence on anybody.<sup>1</sup>*

**Appointed by:** President George H.W. Bush, 1992.

**Law School:** Loyola University of Chicago School of Law, J.D., 1974.

**Prior Legal Experience:** Gilbert & Gilbert, 1974-1988; Special Assistant Attorney General, 1974-75; Assistant City Attorney, City of Carbondale, 1985-78; Vice Chairman and Chairman of the Illinois State Board of Elections, 1981-1985.

**Prior Judicial Experience:** Illinois Circuit Judge, 1988-1992.

**Background and Reputation in the Legal Community**

Judge Gilbert brought a background of private practice, public law, and state judicial experience to the federal bench. He began his law career with his father and uncle in the firm of Gilbert & Gilbert. He then served as a Special Assistant Attorney General in the Public Aid Enforcement Division and as a Carbondale Assistant City Attorney. While in private practice, Judge Gilbert specialized in real estate and corporate law where he represented business owners, real estate developers, and municipalities. He also handled probate matters for the elderly, divorce proceedings, and minor criminal cases.

Judge Gilbert has been actively involved his community and his profession with service to the Morris Library, his church, the Boy Scouts, and the Southern Illinois School of Law. He also served as a member of the National Council on Governmental Ethics Laws for fifteen years and was one of four Republican members appointed to the Illinois Board of Elections.

Lawyers praise Judge Gilbert for his professionalism, even-handed judicial demeanor, and a well-managed courtroom. Other attorneys noted that he is sometimes willing “to take unpopular stands on issues” and that “he sometimes writes long and very thorough opinions explaining his position.” His court management skills were also favorably reviewed. “He’s a master at running trials. He’s always very prepared and ready to go,” says another. Both plaintiffs’ lawyers and civil defense attorneys speak of his even-handedness and fairness at trial. “He rules straight down the line,” said one attorney. “He approaches each case anew. He doesn’t pre-judge either side.” Criminal attorneys consider Judge Gilbert fair, neither favoring the defense nor the government. “He’s as fair as the sentencing guidelines allow him to be,” said one criminal defense attorney.

**Scott Walker**

---

1

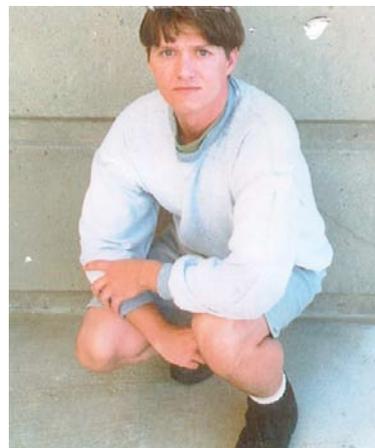
<sup>1</sup>Sentencing Transcript at 151, *United States v. Scott Walker*, Cr. 96-CR-40094 (S.D. Ill April 9, 1999).

**Offense:** Conspiracy to Distribute & Possession with Intent to Distribute Methamphetamine, Marijuana, and LSD; Possession with Intent to Distribute Marijuana & Methamphetamine.

**Sentence:** Life without Parole.

**Projected Release Date:** None.

By age twenty two, Scott Walker was fully immersed in the drug culture. He had been smoking marijuana at least twice a week since age fourteen, experimented regularly with LSD, and became a heavy user of methamphetamine from 1993-1995. While he got some control over his own drug use, he continued to abuse meth and marijuana until his arrest in 1996. Scott was also an active part of a distribution network for these drugs in the southern Illinois area where he lived. Eventually the police arrested the participants in this conspiracy, including Scott, as well as their sources in Arizona.



Scott went to trial and was convicted based on the testimony of several of his associates who cooperated in exchange for sentence reductions. His offense level calculation began with an aggregation of all the drug quantities that cooperating witnesses testified about at Scott's trial which resulted in a base Offense Level of 34.2. However, his Offense Level was then increased to 43 for his leadership role, possession of gun, obstruction of justice, and his use of minors to commit the offense (including his younger brother).<sup>3</sup> Level 43 requires a mandatory life sentence without parole so the judge had no discretion at sentencing.<sup>4</sup>

In contrast, Timothy Conway, who was the main supplier and alleged kingpin of the conspiracy, initially received only 71 months, even though Conway was twenty years older and he had two prior felony drug convictions. However, because Conway chose to plead guilty, the government was willing to stipulate to a drug amount far below his actual conduct.<sup>5</sup>

---

2

The government presented historical evidence from its cooperating witnesses that spanned a five year period (from 1991-1996) and included multiple transactions involving fourteen different people. The PSI contains a table of these transactions that takes up an entire page.

3

Two points each were added for possession of a firearm, use of minors, and obstruction of justice.

His leadership role bumped him up another four points for a total of 44, but because the sentencing table only goes up to 43, that was his final offense level.

4

Scott had two petty juvenile offenses and an adult criminal trespass, for which he was still on probation, resulted in a Criminal History Category III. As noted above, his Criminal History Category had no impact on his sentence.

5

Prior to his plea agreement, the government gave Conway immunity for some of his conduct. Scott's attorney contended in his appeal that despite the agreement, Conway could still have been held accountable for a comparable quantity of drugs to Walker. Appellant's Brief, *United States v. Scott Walker*, No. 99-1933 (7<sup>th</sup> Cir.). Scott bitterly complains that his co-defendants lied about the nature and extent of his conduct to help themselves, noting that the only 500 grams of marijuana were

The disparity between Conway's sentence and Scott's was particularly galling to Scott's second attorney who wrote

The Career Offender mandatory Guideline calculations, despite being clearly applicable to Mr. Conway, were not applied to Mr. Conway's case, for no explainable reason. As an attorney, but more importantly as a human being, it is impossible for me to understand how a leader of the conspiracy can get a 71 month sentence without regard to cooperation, while one of his underlings receives a life sentence. . . . I believe Mr. Walker's case is about the most glaring example of how both prosecutors and the Courts use the Guidelines to achieve the disparity that they were created to eliminate.<sup>6</sup>

Actually, the disparity between their sentences increased after Conway testified at Scott's trial because the government then filed a Rule 35 motion to further reduce Conway's sentence. While this motion and his resentencing are under seal, online Bureau of Prison records reveal that Conway was released in December 2001, just sort of five years in prison; about 12 months less than his original 71 month sentence.<sup>7</sup> Nor did any other of Scott's co-conspirators receive a life sentence. In fact, the longest sentence any of them received was Jeffrey Zoph who got 192 months.

At his sentencing hearing, Scott apologized to his family, especially his mother and daughter.<sup>8</sup> He realized that he'd let them all down by his actions. The judge responded by telling Scott that

. . . first of all, you let yourself down. And to do what I am compelled to do under the law is not easy for me. If you think its easy to sit up here and impose a life sentence on someone, it's not. And there's no question you need to be punished severely for what you have done. Whether this is the right sentence or not, is not for me to judge. I have to apply the law and apply the facts to the law, and I've done that here. And it's a very harsh sentence, but that, as I said, is not for me to decide, but I want you to know that it's not easy on this Court to impose a life sentence on anybody. This isn't the first time I've done it. I hope it's the last because I don't like to do it.<sup>9</sup>

---

actually seized from him. January 6, 2003 letter to author at 1 (on file with author). He estimates that he was responsible for only about 15% of the "alleged weights and relevant conduct that [Conway] put on me." December 14, 2004 letter to author at 2 (on file with author).

6

April 4, 2000 letter from Thomas M. Dawson, Esq. to the FAMM Foundation at 2 (copy on file with author).

7

<sup>6</sup>Because of the application of good time credit, it is difficult to calculate exactly how much the judge reduced Conway's initial 71 month sentence.

8

Scott's mother took custody of Scott's daughter after his incarceration. She writes that Scott's first attorney never informed them of his chance for a 5-10 year sentence if Scott cooperated with the authorities. She claims that they now have documentation that this offer existed but was not communicated but "no one will listen and no one cares." Undated letter from Brenda Shelton to author at 1 (on file with author).

9

After the judge pronounced sentence, Scott asked if he could say something further. He told the judge that he wished he had known the potential punishment for his actions. He added, “I believe that it would be in the best interest for all the youth in this country that there should be some education about the federal guidelines and the conspiracy [laws]. . . . [I]f I would have been more knowledgeable as to what was happening, I would not be standing here right now.”<sup>10</sup> Judge Gilbert replied to this comment by stating

I couldn’t agree with you more, and I’ve been preaching that for a long time. I’ve even suggested it would be a wise expenditure of money for the government to put a billboard up at strategic places. . . . You know, if you do more than five grams of crack cocaine, minimum five years.<sup>11</sup>

Judge Gilbert concluded his remarks by telling Scott to write to lawmakers in Washington and “tell them about your experiences and how you feel they might be able to stop this insanity . . . of kids getting involved in drugs.”<sup>12</sup> Scott’s mother took these remarks to heart and is now a state coordinator for Families Against Mandatory Minimums in Arizona.

Judge Gilbert also told those present in the courtroom that day that “maybe somewhere down the line Congress will relieve the people in your position, but again, that is not for this Court to decide, and that is for elected officials to decide.”<sup>13</sup> However, some years later in a newspaper article about his tenure as Chief Judge of the Southern District of Illinois, Judge Gilbert reflected on this case and others, stating

Yes, I have second-guessed myself. . . . There have been times that I’ve had to render decisions, such as in the sentencing area with sentencing guidelines and mandatory minimums, that are dictated by the law. In one particular case, I had to give a life sentence to an individual who I didn’t feel deserved it. That affected for quite a while, day and night, and there was nothing I could do about it.<sup>14</sup>

Scott’s daughter is now a teenager is still being raised by his mother and stepfather. Scott writes from prison that he thinks his case is “one of the worse examples of why the Sentencing Guidelines (mandatory sentencing) doesn’t work. Since I was a child, I was taught that America was the land of redemption. But if you are a first time offender sentenced under a mandatory minimums sentence this is not the case.”<sup>15</sup> He added that he is frustrated

Sent. Tr. at 151.

10

Sent. Tr. at 154.

11

Sent. Tr. at 154-55.

12

Sent. Tr. at 155.

13

Sent. Tr. at 152.

14

*Gilbert Steps Down as Chief Judge*, Southern Illinoian (undated copy on file with author).

15

December 14, 2004 letter to author at 3 (on file with author).

that his life sentence “holds the equivalent of a death sentence except that I’ll die by some sort of prison violence or old age.”<sup>16</sup>

*Compiled from Sentencing Transcript (excerpt), PSI, inmate and family letters, news article, PACER docket sheet, [www.bop.gov](http://www.bop.gov) (online inmate locator service).*

---

16  
January 6, 2003 letter to author at 1 (on file with author).