

Thomas A. Higgins
Middle District of Tennessee

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Appointed by: President Ronald Reagan, 1984.

Education: Christian Brothers College, A.A., 1952; Univ. of Tennessee, B.A., 1954; Vanderbilt University, LL.B., 1957.

Military Experience: Judge Advocate General's Corps, United States Army 1957-60.

Prior Legal Experience: Willis & Higgins, Cornelius, Collins, Higgins & White, 1960-1994.

Background and Reputation in the Legal Community

Judge Higgins began his legal career as a JAG officer with the United States Army. He went on to practice law for twenty-three years, eighteen as a name partner in Nashville law firms. Lawyers surveyed rave about Judge Higgins' legal ability. Comments included: "He is an outstanding judge. He is very smart. He is as good as there is." "He is very bright. He is very scholarly. He is extremely hard working." Lawyers who have appeared before Judge Higgins also agree that he runs an efficient and orderly courtroom and gives great attention to the rules and to detail.

Some plaintiffs' lawyers feel that Judge Higgins rulings tend to run against them. Civil defense lawyers on the other hand say that this judge is "very evenhanded" or "very fair." Most criminal defense lawyers feel that Judge Higgins is "pro-government" and "very law and order," but a few say that he is "doesn't lean toward the government in trial." On sentencing there were mixed opinions on his practices. A majority of defense lawyers find his approach to sentencing to be quite tough. One commented, "In sentencing, he is rigid. He is harsh." Another lawyer said Higgins "has no problem being tough in criminal cases. But he does respect their constitutional rights." Other comments were more balanced, with one lawyer writing that Higgins applies tough or long sentences if he feels that it is "warranted under the facts and the law."

Eric A. Johnson

Charge: Conspiracy to Distribute Powder & Crack Cocaine.

Sentence: 188 months.

Projected Release Date: February 21, 2012.

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Sentencing Transcript at 158, *United States v. Eric Johnson*, Cr. 97-00107-26, No. 97-00159-01 (M.D. Tenn., June 29, 1998).

Eric Johnson was thirty-two years old when Judge Higgins sentenced him to almost sixteen years in prison for conspiracy to distribute cocaine. At the time of his conviction, Eric had been living with his girlfriend of eleven years, Yvette Gleaves, and their three children.² In addition to a stable family life, Eric had also worked hard at a variety of legitimate jobs after graduating from high school in 1983. For example, from 1987 to 1990, he prepped dump truck beds for painting for a manufacturing company; from 1991-1994, he delivered parts for an automotive company; and since 1994, he had his own business called East Side Detail which cleaned vehicles. According to social security records, however, he never was able to earn more than \$17,000 in any year and he had several years with no reported income. By his own admission, to make ends meet for his family Eric sometimes supplemented his income by engaging in cocaine trafficking. His only disagreement with the government was the frequency and extent of his illicit life.

According to the government, starting around 1993, Eric helped supply Darrell McQuiddy and his brother, Sean, with powder cocaine. At that time, the McQuiddys were in the process of building a crack and powder cocaine distribution network in Nashville. The brothers had started selling drugs young, Darrell was only fifteen and Sean fourteen. But they expanded into a major operation with the help of Linus Leppink who helped the McQuiddys find a bigger, out-of-town source. After the McQuiddy operation outgrew Eric's supply, the government asserted that Eric's role shifted from wholesaler to being a distributor for the McQuiddys.³

In August of 1997, a multi-agency investigation resulted in the arrest and indictment of the McQuiddys and four other members of their group. Eric was not in the original indictment and he remained free. According to the government, however, he continued his drug dealing with other individuals, including Mark Weeden and three other individuals. When some of these participants were arrested, they told government agents that they had been working for Eric for several months, mostly dealing in quarter kilos. When some defendants in the McQuiddy case began cooperating, Eric's participation in that conspiracy also came to light and he was charged in that case which expanded to twenty-five defendants.

As a result, by December 1997, Eric faced charges in two separate federal criminal cases. Nevertheless, he was released on a bond secured by his girlfriend's father's property. He abided by all his conditions of release while he and his attorney negotiated with the government. Eric considered cooperating and the government seemed interested. A plea agreement was reached that contemplated a substantial assistance motion but the government included a polygraph test requirement and reserved the right to back out if Eric was not completely truthful. In his debriefing, the government agents believed that Eric was withholding information and he failed the subsequent polygraph, thus the government refused to file the cooperation motion.

Eric's attorney tried to hold the government to its promise, but after a hearing on the matter, Judge Higgins concluded that Eric's testimony was in conflict with the government's witnesses and that Eric seemed to be minimizing his own culpability. Eric also contended

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At the time of sentencing, Erica was eleven and the twins, Kaylen and Kaylan, were three years old.

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Eric acknowledges transactions involving the McQuiddys amounting to about one and half kilos, but otherwise insists that in this period he was working for an independent dealer named Belser.

that it was unfair for the government to require him to offer information about individuals who were likely to harm him and his family if he “snitched.” Judge Higgins ruled that although Eric was in a difficult position, it was not the government’s choice but his own that left him without a cooperation agreement.⁴ Thus, Eric had to face a Guideline sentence on both indictments.

In the plea agreement, the parties stipulated that in the McQuiddy conspiracy case, Eric should be held accountable for between 15 and 50 kilos of powder cocaine.⁵ In his separate case, the court agreed with the probation officer’s estimate that 34.78 kilos was supported by the evidence. Eric had only one prior misdemeanor which kept him within Criminal History Category I. The Guidelines mandated that quantity of drugs in the two cases be added together which led to a base Offense Level of 36. Two points were added for his leadership role in the second case for an adjusted Offense Level of 38.

The plea agreement, however, had contemplated a two point reduction for the acceptance of responsibility. At the sentencing hearing, the government argued that he should not receive this benefit because Eric had been untruthful in his testimony during the hearing on his motion to compel a substantial assistance motion.⁶ Judge Higgins disagreed, stating that while he had grave reservations about Eric’s testimony, he was satisfied that Eric had sufficiently admitted that he was in the cocaine business. He told the prosecutor

The fact is Mr. Johnson faces an extended period of imprisonment and it takes an extraordinary person to step up and be completely objective about one’s own conduct. . . . It’s almost a rule of nature that we all, when we look in the mirror, tend to rationalize our own conduct in a light most favorable to ourselves. And in his own frame of reference, he has spoken very eloquently here this afternoon in his statement to the court, acknowledging a disastrous error of judgment on his part for which he makes no excuse. It’s disastrous to his own life at age 32. It’s disastrous to this relationship he’s had with the lady with whom he’s lived for 15 years, the three children, and to all those who depend on him. And I see no good that would come denying him the credit for acceptance of responsibility. It’s been hard for him to accept the fact that the government would not make a motion for downward departure, and he may never really be able to bring himself to accept that.⁷

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The Sixth Circuit affirmed this ruling in *United States v. Johnson*, 208 F.3d 216, 2000 WL 125862 (6th Cir. 2000) (unpublished decision).

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There was evidence that the McQuiddys themselves had received 449 kilograms of cocaine between July 1996 and mid-February 1997 and the total value of the cocaine delivered in this period exceeded nine million dollars. In addition to Eric, the McQuiddys had at least three other dealers to whom they distributed kilo quantities and they operated two drug houses in Nashville which sold both crack and powder cocaine. Leppink played the critical role of middleman, delivering both drugs and money for the McQuiddys.

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If Eric had been denied acceptance of responsibility, his Guideline range would have been 235 months to 293 months, adding about four years to his sentence. The government had also promised to recommend a sentence in the bottom one third of the applicable guideline range.

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Sent. Tr. at 157.

Judge Higgins went on to add that he didn't

see anything to be gained by punishing him further by taking away the credit for acceptance of responsibility and drive these guidelines up further. He's going to pay an enormous price and all the good years between now and the time he's 50 are going to be lost. And the children will be deprived of a father and his support. And it doesn't serve the public's interest, his interest or the interest of society at large. He's going to come back ultimately, if he survives this prison sentence, and it's so severe at this point there's little to be gained by piling it on.⁸

Thus, his Offense Level was adjusted to 36 for a sentencing range of 188-235 months. When Johnson was given the opportunity to speak on his own behalf, he told Judge Higgins that

. . . but I realize that I have done wrong. I just ask you to have mercy on me right now, Judge, and give me a chance and I know I can do what's meant for me to do, and you just give me a chance, I can show you that you can change your life without going to prison for a period of time. . . . We feel sometimes that we just a – lock people up and throw them away it will change them.

I knew what I was going against today and knew what I was going against and that's why I'm here today to face it like a man. I have not tried to leave, leave town, skip town. . . . I don't want to leave town. I want to handle my business so I can get back into the world and live as a man and do the things that I need to do.⁹

Judge Higgins first responded by telling Eric that he felt “there is a lot of good in you. And you have responded in a manly sort of fashion.” But Judge Higgins wanted to know why

. . . did you get in the cocaine business in the first instance? . . . You're 32 years old. And you've got a credible record. Why did you get mixed up in one of the biggest problems in this country? Why did you get mixed up in it? It's a mystery to me why a man of your quality would get mixed up in this business. Was it the money?”¹⁰

Eric's reply was reasonably honest but perhaps less than satisfying. He admitted that “sometimes I did get money, and it was needed,” but he contended that it wasn't “an everyday activity. . . . [O]nce . . . I could work and work, legitimate money, work hard every day, that's what I continued to do.” Still, he admitted that he sometimes returned to drug dealing and that it was a “mistake.” But, he told Judge Higgins that “I know that I can do better and I am doing better, I just ask you to have mercy on me today.”¹¹

In response to these repeated pleas, Judge Higgins had to ask

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Sent. Tr. at 158.

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Sent. Tr. at 152-153.

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Sent. Tr. at 153. Unlike some others in his situation, Eric had been raised by his mother and step-father, whom he regarded as his father, along with his four siblings, and generally regarded his upbringing as good.

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Sent. Tr. at 154.

Well, do you understand that in large part my hands are tied that my discretion is very limited, do you understand that? . . . See, a lot of people, a lot of people are not familiar with what the Congress in this country has done with regard to sentencing in federal cases. And the sentencing laws are very, very harsh and there's no parole. As I explained to you at the time your plea was taken, what you get is what you do. . . . And the scope of this court's discretion is very narrow and the principal means to reduce sentence is just what we have been discussing here all day, and that's a motion for substantial cooperation. Do you understand that? . . . So you're facing stiff penalties and you just have to take it, do you understand?¹²

Eric conceded that he did understand the situation and the judge proceeded to impose the minimum sentence of 188 months.¹³

As sympathetic as Judge Higgins may have been to Eric's personal predicament, the judge also made clear in a follow up letter that this case, like most drug cases, is "just another example of terminal dumbness and greed."¹⁴ He also wrote, "It is the function of the Congress to define federal crimes and fix the penalties. The Congress giveth and the Congress taketh away, blessed be the Congress. If the sentencing laws are thought to be too harsh, the complaints should be taken to Congress."¹⁵

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

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Sent Tr. at 154-155.

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Sean McQuiddy received a life sentence, and Darrell, a founder of the organization and the head of the distribution network, who got 235 months. Eric's 188 months was the fifth most severe sentence of the twenty six defendants in the McQuiddy indictment. Linus Leppink, for example, who played a critical role and was deemed one of the four most culpable defendants received 180 months. The majority of the defendants received lesser sentences ranging from 15 months to 120 months. In Eric's second case, he received the longest sentence as the leader of the conspiracy.

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August 19, 2005 letter from Judge Higgins to author at 1 (on file with author).

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Id.