

Thomas Gray Hull
Eastern District of Tennessee

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Appointed by: President Ronald Reagan, 1983.

Military Experience: United States Army, 1944-46.

Law School: University of Tennessee, J.D., 1951.

Prior Legal Experience: Easterly and Hull, 1951-63; Solo Practitioner 1963-72; Hull, Weems, Greer & Terry, 1981-82.

Background and Reputation

Beginning in 1951, Judge Hull was a general practice lawyer in Greeneville, Tennessee. He also held a number of elected and appointed government positions. He was a state representative in the Tennessee Legislature, Chief Clerk of the Tennessee House of Representatives, and Legal Counsel to Governor Lamar Alexander before he was appointed to the federal bench by President Reagan in 1983. Judge Hull has also been a member of the Asbury United Methodist Church in Greeneville since 1940 and a member of the American Legion and Veterans of Foreign Wars since 1946.

During his confirmation hearing, Judge Hull's testimony placed him in the strict constructionist camp: "I feel like the legislature and the Congress have the right to make the laws and the President has the right to carry them out. And it is the function of the judge to discern whether these laws violate any constitutional rights of the people. I think the Constitution ought to be strictly construed in order that the other two branches of Government can carry out the functions which the Constitution gave them."

Generally, civil attorneys feel that Judge Hull is even-handed. One plaintiffs' attorney stated, "I have never seen any evidence of him leaning toward one side or the other." On the other hand, most criminal defense attorneys indicated that Judge Hull is pro-government, although several others countered that statement with comments like "He really tries to do right" and "He tries really hard to do what he thinks is fair." Similarly, on sentencing, the consensus is that the judge is tough but that he tries to be fair. One attorney was quoted as follows: "He is tough in sentencing—but not as tough as some. You can sometimes persuade him. Even when he maxes somebody out, it is done in a kind and decent way. He treats the defendant with dignity and respect."

Mark Moody

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Re-sentencing Transcript at 5-6, *United States v. Moody* (E.D. Tenn. Dec. 4, 2000) (No. CR-2-93-35).

Offense: Conspiracy to Distribute Cocaine.
Sentence: 120 months.
Release Date: July 19, 2005.

In an opinion reversing Judge Hull and sending Mark Moody back to jail for another five years, the Sixth Circuit called the case “a triumph of the letter over the spirit of the law,” and an unfortunate “occasion when justice must of necessity yield to the rule of law.”² In capsule, while there is no question that Mark was a cocaine trafficker, every judge who has reviewed his case has concluded that he was badly served by the system.



By his own admission, from November 1989 until his arrest in February 1993, Mark was involved in importing powder cocaine to Tennessee from Florida. Mark and his friend, Paul Irvin, would pool their cash and give it to a third associate, Jason Hughes. Hughes would go to Florida, buy the cocaine, and bring it back. Mark and Paul would split the cocaine and resell it to others who distributed it to the ultimate users. In the early years, they generally purchased about a half kilo per month, but the quantities increased near the end of the conspiracy to as much as two kilos per month. Mark distributed most of his cocaine to a single retailer, Terry Hall, whereas Paul had more associates.³

There is also no question that Mark was an alcoholic and a drug user during this period and that he repeatedly endangered others by driving under the influence. Beginning at age twenty-three, he accumulated five DUI convictions. In one arrest, he also pled guilty to aggravated assault because there was a serious accident involving injuries. In another, he was convicted of fraudulent use of a driver’s license and criminal impersonation (for pretending to be his brother) and possession of marijuana. For these convictions, he eventually served about two years in state prison.

Yet, once he was arrested in the federal drug case, Mark tried his best to make amends. He approached the FBI and offered to cooperate with the investigation of the conspiracy. In February and March of 1993, he participated in six debriefings without the assistance of counsel and provided the agents with information about his role and the roles of others. In exchange, the government offered Mark a pre-indictment plea that would guarantee him no more than a five year sentence in exchange for his continued cooperation and willingness to testify against other defendants. When Mark expressed some reservations about the offer, a federal prosecutor and the FBI special agent told Mark that he was being offered a good deal and they encouraged him to seek legal advice.⁴

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United States v. Moody, 206 F.3d 609, 616 (6th Cir. 2000).

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Even without Mark’s admissions, the government had an overwhelming case based upon telephone wiretaps, recorded conversations, and undercover drug buys.

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This representation was accurate. At the time of the five year plea offer, Mark had already admitted to conduct which exposed him to a ten year mandatory minimum sentence.

Mark went out and found an attorney, Richard Pectol, who requested an up front payment of \$5,000. More than a month later, Pectol contacted the government for the first time and rejected the offer. Amazingly, Pectol made this decision for Mark without ever getting copies of the FBI reports detailing Mark's admissions. The government responded with a multi-count indictment. By this time, the government had information that the conspiracy had involved eighteen kilos of cocaine, six kilos more than Mark had estimated. To make matters worse, Mark was then locked up for his DUI-related convictions. From jail, he rehired Pectol and paid him an additional \$10,000 to continue to represent him. After some brief discovery, Pectol advised Mark to plead guilty because there was no way to overcome the incriminating statements he had made in his FBI debriefings.

After his plea, the PSI attributed eighteen kilos of cocaine to the conspiracy with a corresponding Base Offense Level of 34. A three point enhancement for his leadership role and a three point decrease for acceptance of responsibility essentially cancelled each other out. Because of his DUI history, Mark's Criminal History Category was V, leading to a Guideline range of 235-293 months, with a mandatory minimum of ten years. The government filed a substantial assistance motion, telling the Court that the defendant had "assisted the United States in framing the indictment in this matter and in identifying the various players and their roles,"⁵ and recommended a sentence of 168 months. Judge Hull departed downward even further and imposed a sentence of 120 months.⁶ However, Mark continued to cooperate with the government and eventually testified twice for the government in its case against the Florida supplier.⁷

Mark later filed a motion to vacate his sentence based upon ineffective assistance of counsel. After a hearing, Judge Hull found that Pectol had failed to adequately investigate the case prior to advising Mark to reject a plea offer. Although no indictment was pending at the time, Judge Hull reasoned that the plea process was nevertheless a critical stage deserving of Sixth Amendment right to counsel protection.⁸ As relief, he decided to restore Mark to the position he would have been in had counsel's error not occurred – imposing the five year sentence that the government had originally offered in exchange for the cooperation Mark in fact provided.

Mark completed the prison portion of his sentence without incident and was released to a halfway house in May 1999.⁹ There, he took part in weekly alcohol and drug counseling. A

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Moody, 206 F.3d 609, 611 (6th Cir. 2000).

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Mark did not file a direct appeal.

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The government did not move under Rule 35 for an additional sentence reduction for this cooperation.

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Judge Hull wrote, "To deny *Moody* the constitutional protection of the effective assistance of counsel when he had retained counsel to protect him at this critical stage, simply because the government had not reduced to writing the charges it advised *Moody* would be forthcoming during the attempted solicitation of his plea, would be a travesty of justice under the facts of this case." Judge Hull's May 20, 1998 Order Granting *Moody*'s §2255 Motion at 5-6 (copy on file with author).

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supervisor at Mark's rehabilitation program said that he had "demonstrated a sincere desire to remain chemically free and lead a productive life."¹⁰ On November 9, 1999, Mark was placed on supervised release and went to live with his eighty two year-old father, who was increasingly frail and needed daily assistance.¹¹ Mark continued to remain drug free and he became an active member in his church. He also worked with at his brother's sign painting business and managed his family's rental property.

However, on January 25, 2000, the Sixth Circuit reversed Judge Hull's ruling on the ineffective assistance of counsel petition. That Court ruled that Supreme Court precedent was clear that before an indictment, there is no right to counsel under the Sixth Amendment because a "critical stage of the proceedings" has not been reached, even if the government is engaged in plea negotiations with the defendant.¹² The opinion concedes Mark's counsel was ineffective but believed it was bound by precedent.

In a concurring opinion, Judge Wiseman noted that the Federal Sentencing Guidelines substantially increased the importance of pre-indictment plea bargaining for a variety of reasons. In particular, he noted that pre-indictment pleas allow the parties substantially more control over the eventual sentence because charges can be selected that reduce a defendant's exposure under the Guidelines' real offense approach and because the parties often stipulate to a reduced drug quantity. Judge Wiseman recognized that "such bargaining does occur and will likely continue to occur due to its advantages for both prosecutors and defendants," even though such bargaining undermined Congressional intent in creating the Guidelines. Thus, he concluded that pre-indictment negotiations were "a perilous encounter for defendants" and as such, they required counsel in the face of "a complicated procedural system and a more knowledgeable adversary." Thus, Judge Wiseman urged the Supreme Court to use this case to reconsider its precedents which foreclosed extending the right to counsel to the pre-indictment state.

Judge Wiseman's plea went unfulfilled when the Supreme Court denied certiorari on Mark's case in October 2000. As a result, the case was returned to Judge Hull for re-sentencing. At the re-sentencing, the government insisted that Judge Hull had no discretion and that he had to reinstate the original ten year sentence. Judge Hull asked the government to reconsider its position, stating:

I was just hoping maybe [the government] would back off a little bit. This guy, he's been treated about as bad as anybody I know in the 18 years I've been here. . . . I feel sorry for him, but I guess they don't- - they don't give me an opportunity to be sympathetic. . . . How am I going to do anything to help him? You tell me how I can help him, and I'll do it.¹³

Mark had a completely clean record during the first five years of his term. November 16, 2000 letter to Nikki C. Pierce, Esq. From Carla J. Simmons, Case Manager FCI Ashland (copy on file with author).

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Nov. 20, 2000 letter from Monica Tillery, Assistant Director, Midway Rehabilitation Center, to The Honorable Thomas G. Hull, E. D. Tenn. (copy on file with author).

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Mark's mother had died while he was in prison.

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Moody, 206 F.3d at 614.

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Defense counsel tried to create an argument based upon *Apprendi v. New Jersey*, but Judge Hull felt that his hands were tied by the Sixth Circuit's order which granted him no authority to do anything but reinstate the sentence. In rejecting defense counsel's argument, Judge Hull stated “. . . I've been fighting too . . . the only thing I can ask, I'd like for the U.S. Attorney's Office to give him some slack; but [they're] not going to do it. . . .”¹⁴

Over the government's objection, Judge Hull did allow Mark to self-report back to prison. Mark did so on March 12, 2001. That same day, Mark's sister died of brain cancer. The next year, his brother, who he worked with in the sign business for twenty years, also died after suffering from Lou Gehrig's disease. In 2005, his father suffered a serious stroke.

Mark filed a petition for commutation of his sentence which included many letters and a petition from the community. He also has the support of his Congressman, Representative Bill Jenkins (R-TN). However, President Bush has not commuted the sentence of a single federal drug prisoner during either term and Mark was no exception.

He wrote from prison that he anticipated that re-entry into society would be difficult, stating that there will be a huge void in his life with the loss of his siblings. Yet, he felt confident he would stay out of jail and off drugs and alcohol.¹⁵

Compiled from PSI, Re-Sentencing Transcript, Commutation petition, inmate letters, letter from Congressman William Jenkins, PACER docket sheet, appellate opinion.

14 Re-Sent. Tr. at 5-6, *United States v. Moody*.

Re-Sent. Tr. at 8.

15 March 21, 2005 letter to author at 1 (on file with author).