

James D. Todd
Western District of Tennessee

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Appointed by: President Ronald Reagan, 1985.

Law School: Memphis State U. School of Law, J.D., 1972.

Prior Legal Experience: Waldrop, Farmer, Todd & Breen, 1972-1983.

Prior Judicial Experience: Circuit Judge, 26th Judicial District, Jackson, Tenn., 1983-85.

Background and Reputation in the Legal Community

Before and during law school, Judge Todd worked as a high school teacher in Florida and Tennessee. He practiced law with the Jackson law firm of Waldrop, Farmer, Todd & Breen as a litigator for eleven years before becoming a judge on the Tennessee Circuit Court. After two years on that court, he was appointed to the federal bench by President Reagan.

Judge Todd has been a member of numerous professional associations, including the International Association of Insurance Counsel, the Tennessee Bar Association, where he served as a committee chairman, and the Tennessee Defense Lawyers Association. He has served as on the board of directors of the Boys Club in Jackson and as treasurer and coach on several youth baseball organizations.

Lawyers say that Judge Todd is an outstanding judge. Simply put, one noted, "He acts like a federal judge should." Another added, "He hasn't forgotten he is a human." He is considered both bright and pleasant to appear before. Lawyers also wrote, "He's wonderful. I love to get cases before him. He was a litigator for a long while, and he really knows where lawyers are coming from." "He is very, very prepared. He'll know everything about your case."

Civil lawyers on both sides consider Judge Todd a paragon of impartiality. Criminal defense attorneys said defendants receive a fair trial before the judge saying he is not "prosecution or defendant-oriented." On sentencing, he is considered fair and "as reasonable as the guidelines allow him to be."

Lakisha Murphy

Charge: Conspiracy to Distribute Crack and Powder Cocaine.

Sentence: 10 year mandatory minimum.

Projected Release Date: May 29, 2009.

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Sentencing Transcript at 77, *United States v. Lakisha Murphy*, Cr. 00-10010-04 (M.D. Tenn. August 22, 2000).

Lakisha Murphy was twenty-one years old when she was arrested in 2000. She had been romantically involved with Cedric Robertson since she was fifteen. Cedric was a quadriplegic when they met, having been injured in a car accident. In addition to their romantic relationship, Lakisha was also his primary caretaker, which included bathing and feeding him because he had no use of his legs and only limited use of his arms.² When she wasn't helping Cedric, she held low wage jobs as a cashier to support herself.³



Cedric, however, was a member of the “Hoover Crips” gang,⁴ and the alleged leader of a multi-level conspiracy to distribute crack cocaine. Although she sometimes maintained a separate residence, she and Cedric lived together most of the time and he conducted his drug activities from his home. The government contended that when no gang members were around, Lakisha helped him to sell crack when customers came to the house and that she was present for meetings during which she became aware of the extent of the conspiracy.

When the police raided Cedric's house on January 16, 2000, they found substantial quantities of powder and crack cocaine in a shed and in the kitchen trash can as well as scales and other distribution equipment.⁵ Cedric, Lakisha, and eight members of the conspiracy were present during the raid and several made incriminating statements to the police that day. Based upon these statements and additional police investigation, eighteen people were eventually arrested and thirteen, including Lakisha, were indicted by a federal grand jury.

Lakisha pled guilty to conspiracy to distribute crack and powder cocaine. Although more than 50 grams of crack cocaine were seized from the house, at sentencing her attorney argued that she should not be held accountable for the drugs found that day. Lakisha testified that she only assisted with sales a few times and that she was excluded from the meetings that discussed the conspiracy.⁶ She also denied knowing about the drugs that were in the house at

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A police lieutenant testified at the sentencing hearing that Cedric could not dial a phone, or get out of bed himself. Sent. Tr. at 14.

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The PSI reports that she was employed by the Backyard Barbecue for eleven months in 1998 and for ten months at the Dodge Convenience Store in 1999.

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The government argued that Lakisha was also a gang member but Judge Todd disagreed, stating believed that she was, at most, a “Cripette,” which the judge analogized to “the ladies’ auxiliary to the Rotary Club, a group of women who don’t become members of the gang but who are there to support and help the gang.” Sent. Tr. at 74.

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239.6 grams of powder cocaine were found in the kitchen trash can and 127.5 grams of crack in the utility shed. The police also searched a car and a truck that were parked on the premises. From the car, they seized two digital scales and \$1,125 in cash. *United States v. Robertson*, 40 Fed. Appx. 933, 935, 2002 WL 16083345 (6th Cir. (Tenn.)). The PSI notes that the truck contained a rifle and a handgun.

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Her testimony was contradicted by Lieutenant Patrick Willis. However, he admitted that much of his information that Lakisha had handled drugs frequently and in larger amounts that she admitted came from co-defendants who received lesser sentences in exchange for their cooperation. Sent. Tr. 24-27.

the time of the search warrant. However, Judge Todd concluded that she was sufficiently aware of and involved in the activities of the group that the amount seized from the house was foreseeable to her. He also found problems with her credibility. Thus, he accepted the probation officer's calculations, noting that "much more drugs probably could have been attributed to the defendant as a result of this conspiracy but were not."⁷ Judge Todd also rejected a role in the offense reduction, holding that Lakisha could not be considered a minor or minimal participant because she helped Cedric in too many ways and that he was a high level participant himself.⁸

As a result, her adjusted Base Offense Level was 29 (32 for the drug quantity minus three points for acceptance of responsibility). Her ultimate sentence, however, was significantly affected by her previous minor run-ins with the law. At age seventeen, she was convicted in juvenile court of assault for a fight with another girl and she received probation. At age nineteen, she was again convicted of assault, pled guilty, and paid a fine and court costs.⁹ Under the Guidelines, each of these assault convictions added a point to her criminal history calculus, elevating her to a Criminal History Category II. Thus, although her Guideline range was 97-121 months, because more than 50 grams of crack cocaine was involved, the Guideline range was trumped by a mandatory minimum of ten years. However, without even just one of these minor prior convictions, Lakisha would have been eligible for the 1994 "safety valve,"¹⁰ which would have permitted the judge to sentence her under the mandatory minimum to a significantly lower term.¹¹

Thus, despite ruling against Lakisha on various legal arguments put forward by her attorney, Judge Todd was troubled by this case and spoke to Lakisha at length about her situation. He started by saying

The tragedy of this, Ms. Murphy, is that you made a very poor choice of boyfriends. . . . I thought for a moment that if you had fallen in with a preacher, you would have been a member of the choir. But then preachers don't take up with 15-year-old girls, so that was a poor analogy.

I have no doubt that this was Cedric Robertson's drug operation. Your involvement in it was because you were his companion. . . . [But] a woman can stand by her man

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Sent. Tr. at 71-72. The government probably could have argued for a greater quantity by relying on the cooperating witness' estimate of the drugs sold by Cedric's Crips gang over a longer period of time but chose not to in this case.

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Sent. Tr. at 73.

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She also was arrested for another assault at age fifteen and she was required to do some community service. This incident did not count in the computation of her Criminal History.

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Codified at 18 U.S.C. §3553(f).

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Assuming that just one assault conviction was excluded, lowering her Criminal History to Category I, her adjusted range would have been 70-87 months. *See* U.S.S.G. §5C1.2 (providing a two point reduction in offense level for safety valve defendants). If she had been granted a minor role in the offense, that would have taken her Offense Level down two more points to 57-71 months. *See* U.S.S.G. §3B1.2(b).

without being a criminal herself. . . . But you had the misfortune in this case of having a boyfriend who couldn't use his arms and his legs and couldn't care for himself, so you became his arms and his legs. And in doing so, you did, in fact, become a criminal.¹²

Judge Todd also told Lakisha

The problem is [] that the guidelines limit my discretion in what I can count and what I can't count. . . . And while I think this is an appropriate case for the safety valve – I think this is exactly what Congress had in mind when they passed the safety valve provision – I am unable under the law to disregard or ignore the two criminal history points. And because there are two criminal history points, the safety valve can't be applied. . . . I'm unable to get there under the law.¹³

When it was her turn, Lakisha tried to explain to the judge what the reality of her situation had been. She told him

Well, I'd just like to say that, you know, I admit my involvement in it. But you really would have to have been there to realize what I was trying to say because I really was not, you know, fully involved in all this. And I wasn't a gang member. And, you know, I didn't allow it. . . . I wasn't even allowed back there where they were. It was my house but Cedric also lived there with me, and I couldn't go and tell him what to do.¹⁴

Judge Todd later explained to Lakisha that he had to give her 120 months under the circumstances

. . . part of the problem in this case, Ms. Murphy, is that the sentencing guidelines passed by Congress have tied my hands as to what discretion I have. They also have passed statutory minimums which also tie my hands. And the only way, it seems to me, you could have avoided the statutory minimum is if you had been one of the first ones to go tell on the rest of the gang. But I understand that women who are standing by their man don't often do that.¹⁵

Cedric Johnson received 192 months, but other members of the conspiracy who were full-fledged Crips, cooperated with the government and received less time than Lakisha.¹⁶ At the

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Sent. Tr. at 72.

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Sent. Tr. at 75. Lakisha's attorney tried to get Judge Todd to reconsider the Criminal History Category but he told her she needed to convince the Court of Appeals, and he added, "I wish you well in that endeavor. I hope you are successful, but I'm afraid you won't be." Sent. Tr. at 76. Judge Todd was partly correct. The Court of Appeals remanded the case to determine if Lakisha had been represented by counsel in her juvenile case. Judge Todd found that she had been and thus he had to reimpose the original sentence.

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Sent. Tr. at 76.

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Sent. Tr. at 77.

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end of the hearing, Judge Todd duly noted this fact, stating that “it seems unfortunate in this case that you’re doing more time than some of the guys did. . . . and there’s nothing I can do about it.”¹⁷

At the end of the sentencing proceeding, the probation officer stated that Lakisha had been completely cooperative while on release. She had no positive drug tests and reported “every time she was supposed to.”¹⁸ Therefore, the judge let her self-report to prison.

Although Lakisha’s parents were not married when she was born and her mother received public assistance, Lakisha says her mother provided her with essential care and guidance. However, when she was fifteen, she started smoking marijuana,¹⁹ dropped out of school, left home, and became involved with Cedric. Lakisha writes from prison that hopefully her story will “help some woman in the long run.”²⁰

Compiled from Sentencing Transcript, PSI, inmate letter, PACER docket sheet, appellate opinion.

For example, Roderick Cole received 63 months, Antonio Brown, 96 months, Twan Perry, 63 months, and Jerald Haynes, 84 months. In fact, besides Cedric, only two other co-defendants, Moncedrus Robertson and Cornelius Johnson, received more time than Lakisha. In addition, the alleged supplier for the organization, Andrico Cole, was acquitted at trial.

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Sent. Tr. at 80.

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Sent. Tr. at 78.

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By age seventeen until her arrest, she reported that she used marijuana daily.

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February 5, 2004 letter to author at 1 (on file with author).