

BOUDIN, Circuit Judge. The question is whether a district court may depart downward to save taxpayers the expense of imprisoning a defendant who is likely to be depopf after2-

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Instead, on the day of the resentencing hearing (March 20, 2000), Maldonado filed a motion seeking a downward departure based on evidence of rehabilitation. U.S.S.G. § 5K2.0. Attached were copies of a high school equivalency diploma and certificates evidencing completion of a number of courses Maldonado had taken in 1998 and 1999 while in prison. The government

sentence of section 2255.¹ Perhaps so; but if this is the case, the petition--which the government agreed should be granted--can be taken to claim that the sentence was "otherwise subject to collateral attack" because the negligence of counsel thwarted an appeal from the original conviction. Cf. *Bonneau*, 961 F.2d at 23. On this premise, section 2255 gave the district court power "to vacate, set aside or correct the sentence." 28 U.S.C. § 2255.

Nothing in the statute's language resolves the question whether the district court in such a situation is precluded from calculating the proper sentence anew. The choice resembles that presented where, on direct appeal, a court of appeals sets aside a sentence for some defect in the calculation but neither explicitly nor implicitly limits the district court in the scope of its resentencing. Once again, the district court is not ordinarily required to go beyond correcting the error identified by the court of appeals, e.g., *United States v. Rivera-*

¹Namely, that the sentence was unlawful or the court was without jurisdiction to impose it, or "that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack" 28 U.S.C. § 2255.

²In two cases, somewhat surprisingly, the Second Circuit has required resentencing de novo. United States v.

³See, e.g., United States v.

⁴Accord United States v. Rudolph, 190 F.3d 720, 723 (6th Cir. 1999);

windfall. U.S.S.G. § 5K2.19 (Appendix X, amendment 602,
effective

i s m e n i t l e d

Department and lying to the court, U.S.S.G. § 3C1.1, and to the failure to give Maldonado a two-level reduction for acceptance of responsibility, id. § 3E1.1(a). The government's able brief refutes each of these claims in detail.

The sentence is vacated and the matter remanded to the district court for resentencing in accordance with this opinion.