

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
v. : NO. 3:03CR156 (EBB)
CHARLES COLEMAN :

RULING ON MOTION TO VACATE,
SET ASIDE AND CORRECT SENTENCE

Defendant has moved, pursuant to 28 U.S.C. § 2255, to vacate, set aside and correct his sentence of thirteen months' incarceration imposed on November 30, 2004.

When defendant appeared before the court for sentencing, the parties and the court agreed that defendant had qualified for the safety valve and appeared to be a suitable candidate for the Federal Bureau of Prisons Intensive Confinement Center program. In order for defendant to participate in the program, it was necessary for him to be sentenced to more than 12, but not more than 30 months of incarceration. Accordingly, the court departed downward from his guideline range of 87 to 108 months to a sentence of 13 months in the expectation that he would enter the program on February 11, 2005, and that he would serve a sentence of 6 months' incarceration. Thereafter, the Bureau of Prisons abolished the program.

By this motion, defendant seeks to vacate, set aside and correct his sentence to reflect the actual period of incarceration the court intended. The government is not opposed to the motion.

In United States v. Malcolm, 432 F.2d 809, 816 (2d Cir.

1970) the court held that any material false assumptions as to any facts relevant to sentencing renders the entire sentencing procedure invalid as a violation of due process. In this case, in order to provide the defendant with the advantages of participation in the boot camp program, and on the assumption that such program would be available to him, the court sentenced defendant to 13 months. That assumption has proved to be false and, accordingly, the motion [Doc. No. 19] is granted.

Defendant shall be resentenced on February 4, 2005, at 9:00 a.m.

SO ORDERED.

ELLEN BREE BURNS, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Dated at New Haven, CT, this ____ day of January, 2005.