

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted December 19, 2008*

Decided January 5, 2009

Before

FRANK H. EASTERBROOK, *Chief Judge*

RICHARD A. POSNER, *Circuit Judge*

TERENCE T. EVANS, *Circuit Judge*

No. 07-3295

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DAVID E. MALONE,
Defendant-Appellant.

Appeal from the United
States District Court for the
Northern District of Illinois,
Eastern Division.

No. 05 CR 107
Elaine E. Bucklo, *Judge.*

Order

We vacated Malone's conviction for money laundering and remanded so that the district court could consider whether this affected Malone's sentence on the remaining counts. *United States v. Malone*, 484 F.3d 916 (7th Cir. 2007). The district court held that it

* This successive appeal has been submitted to the original panel under Operating Procedure 6(b). After examining the briefs and the record, we have concluded that oral argument is unnecessary. See Fed. R. App. P. 34(a); Cir. R. 34(f).

does not and left all of the remaining sentences in place.

Malone contends, in this successive appeal, that the judge violated the Due Process Clause by resentencing him without a hearing at which he could provide evidence of his rehabilitation while in prison. There are two problems with this argument. First, it was waived. The district judge asked Malone whether he wanted a hearing; Malone replied that he did not. Second, the judge did not “resentence” Malone. The judge set aside the sentence on the vacated count and left the remaining sentences as is. A conclusion that a sentence imposed in 2006 should not be disturbed in 2008 does not require a hearing.

AFFIRMED