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An Objection by the Prosecution Could Have Kept Dean in Prison

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WASHINGTON, Jan. 8—Judge John J. Sirica's decision to release John W. Dean 3d from prison today, along with Jeb Stuart Magruder and Herbert V. Kalmbach, could have gone the other way for strictly technical reasons.

The Federal district judge could have refused to commute the rest of Mr. Dean's sentence on the ground that his lawyers had failed to meet the deadline set by the Federal rules of criminal procedure for requesting a reduction in sentence.

But the Watergate special prosecutor, while aware of the pending attempts to win freedom for three of the Watergate defendants, did not raise any objection based on the rules, so the move went through unchallenged.

The practice of reducing the sentence of a convicted criminal who has subsequently cooperated with law enforcement officials is not an unusual one, although circumstances leading to such action do not arise frequently.

Rule 35 of the Federal Code authorizes a judge who sentenced a convicted criminal to reduce that sentence at any time, as long as a motion requesting his action has been filed within 120 days after the sentence is imposed.

2 Days Over Deadline

Mr. Dean was sentenced on Aug. 2, 1974, but his motion for a reduction in sentence was not filed until Dec. 2—122 days later, according to the order Judge Sirica issued today. The notice of Mr. Dean's intention to request a reduced sentence, filed with the special prosecutor, arrived on Nov. 23 howev-

er two, days within the deadline.

Motions on behalf of Herbert W. Kalmbach and Jeb Stuart Magruder, the others released from prison today were, filed eight days and three days, respectively before the deadlines.

Prof. G. Robert Blakely of the Cornell Law School, an authority on criminal law, said that Judge Sirica was free to overlook the procedural irregularity in granting Mr. Dean's motion as long as the Government did not raise the issue.

Today's decision by Judge Sirica left only two men convicted of Watergate crimes still in jail.

Charles W. Colson, former special counsel to President Nixon is serving one to three years at Maxwell Air Force Base, Montgomery, Ala. He pleaded guilty to a charge of obstructing justice in connection with the burglary of the office of Dr. Daniel Ellsberg's psychiatrist in Beverly Hills, Calif.

Edward L. Morgan, a former White House deputy counsel, began serving a four-month sentence at a Federal detention center at Lomdoc, Calif., on Monday. He was convicted of conspiracy in connection with the illegal backdating of President Nixon's tax records.