

O'CONNOR, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 97-9217

MANUEL DEJESUS PEGUERO, PETITIONER v.
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[March 2, 1999]

JUSTICE O'CONNOR, with whom JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER join, concurring.

I join the opinion of the Court, and I write separately to express my views about the meaning of prejudice in this context. When, as here, a district court fails to advise a defendant of his right to appeal, there are two ways in which this error could be said not to have prejudiced the defendant. First, a defendant might not be prejudiced by the error because he already knew about his right to appeal. That is the case here, and the Court properly concludes that under these circumstances, the defendant has not shown that he is entitled to collateral relief.

Second, a defendant might not be prejudiced by the district court's failure to advise him of his right to appeal because he had no meritorious grounds for appeal in any event. In my opinion, there is no reason why a defendant should have to demonstrate that he had meritorious grounds for an appeal when he is attempting to show that he was harmed by the district court's error. To require defendants to specify the grounds for their appeal and show that they have some merit would impose a heavy burden on defendants who are often proceeding *pro se* in an initial 28 U. S. C. §2255 motion. If the district judge had fulfilled his obligation to advise the defendant of his right to appeal, and the defendant had wanted to appeal,

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he would have had a lawyer to identify and develop his arguments on appeal. The defendant should not be penalized for failing to appeal in the first instance when his failure to appeal is attributable to the errors of a district court judge. This result is consistent with our resolution of *Rodriquez v. United States*, 395 U. S. 327 (1969). In *Rodriquez*, we held that when a defendant's failure to appeal a conviction is attributable to an error by his lawyer, the defendant is entitled to collateral relief without requiring him to show that his appeal would have had merit. In my view, there is no reason to adopt a different rule when the failure to appeal results from a district judge's error.