sentencing him to imprisonment only.[136] But the Court has held that the imposition of a sentence does not from the moment of imposition have the finality that a judgment of acquittal has. Thus, it has long been recognized that in the same term of court and before the defendant has begun serving the sentence the court may recall him and increase his sentence.[137] Moreover, a defendant who is retried after he is successful in overturning his first conviction is not protected by the Double Jeopardy Clause against receiving a greater sentence upon his second conviction.[138] An exception exists with respect to capital punishment, the Court having held that government may not again seek the death penalty on retrial when on the first trial the jury had declined to impose a death sentence.[139]

Applying and modifying these principles, the Court narrowly approved the constitutionality of a statutory provision for sentencing of "dangerous special offenders," which authorized prosecution appeals of sentences and permitted the appellate court to affirm, reduce, or increase the sentence.[140] The Court held that the provision did not offend the Double Jeopardy Clause. Sentences had never carried the finality that attached to acquittal, and its precedents

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[136] *Ex parte* Lange, 85 U.S. (18 Wall.) 163 (1874).

[137] Bozza v. United States, 330 U.S. 160 (1947). *See also* Pollard v. United States, 352 U.S. 354, 359–60 (1957) (imposition of prison sentence two years after court imposed an invalid sentence of probation approved). Dicta in some cases had cast doubt on the constitutionality of the practice. United States v. Benz, 282 U.S. 304, 307 (1931). However, United States v. DiFrancesco, 449 U.S. 117, 133–36, 138–39 (1980), upholding a statutory provision allowing the United States to appeal a sentence imposed on a "dangerous special offender," removes any doubt on that score. The Court there reserved decision on whether the government may appeal a sentence that the defendant has already begun to serve.

[138] North Carolina v. Pearce, 395 U.S. 711, 719–21 (1969). *See also* Chaffin v. Stynchcombe, 412 U.S. 17, 23–24 (1973). The principle of implicit acquittal of an offense drawn from Green v. United States, 355 U.S. 184 (1957), does not similarly apply to create an implicit acquittal of a higher sentence. *Pearce* does hold that a defendant must be credited with the time served against his new sentence. 395 U.S. at 717–19.

[139] Bullington v. Missouri, 451 U.S. 430 (1981). Four Justices dissented. Id. at 447 (Justices Powell, White, Rehnquist, and Chief Justice Burger). The Court disapproved Stroud v. United States, 251 U.S. 15 (1919), although formally distinguishing it. *Bullington* was followed in Arizona v. Rumsey, 467 U.S. 203 (1984), also involving a separate sentencing proceeding in which a life imprisonment sentence amounted to an acquittal on imposition of the death penalty. *Rumsey* was decided by 7–2 vote, with only Justices White and Rehnquist dissenting. In Monge v. California, 524 U.S. 721 (1998), the Court refused to extend the "narrow" *Bullington* exception outside the area of capital punishment. *But see* Sattazahn v. Pennsylvania, 537 U.S. 101 (2003) (state may seek the death penalty in a retrial when defendant appealed following discharge of the sentencing jury under a statute authorizing discharge based on the court's "opinion that further deliberation would not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment").

[140] United States v. DiFrancesco, 449 U.S. 117 (1980). Four Justices dissented. Id. at 143, 152 (Justices Brennan, White, Marshall, and Stevens).