

Table 57

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANTS¹
Fiscal Year 2004, Post-Blakely (June 25, 2004, through September 30, 2004)

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	1,245	100.0	86.4
2D1.1 (Drug Trafficking)	119	9.6	84.9
5K2.0 (Departures)	57	4.6	89.5
2L1.2 (Unlawfully Entering or Remaining in the United States)	55	4.4	80.0
7B1.3 (Revocation of Probation or Supervised Release)	39	3.1	92.3
3E1.1 (Acceptance of Responsibility)	37	3.0	91.9
3C1.1 (Obstruction of Justice)	33	2.7	78.8
3B1.2 (Mitigating Role)	30	2.4	90.0
7B1.4 (Term of Imprisonment)	29	2.3	96.6
2K2.1 (Firearms)	26	2.1	92.3
5C1.2 (Limitation on Applicability of Statutory Minimums)	26	2.1	100.0
5E1.1 (Restitution)	25	2.0	68.0
3B1.1 (Aggravating Role)	24	1.9	87.5
4A1.3 (Adequacy of Criminal History)	24	1.9	91.7
5K1.1 (Substantial Assistance to Authorities)	24	1.9	91.7
1B1.3 (Relevant Conduct)	23	1.8	82.6
2B1.1 (Larceny, Embezzlement, and Theft)	19	1.5	79.0
2F1.1 (Fraud)	18	1.4	55.6
4A1.1 (Criminal History Category)	18	1.4	88.9
4A1.2 (Definitions and Instructions of Criminal History)	18	1.4	88.9
4B1.1 (Career Offender)	18	1.4	94.4
5D1.3 (Conditions of Supervised Release)	16	1.3	93.8
6A1.3 (Resolution of Disputed Factors)	15	1.2	66.7
5G1.3 (Defendant Subject to Undischarged Term of Imprisonment)	14	1.1	92.9
4B1.4 (Armed Career Criminal)	11	0.9	81.8
5K2.13 (Diminished Capacity)	10	0.8	100.0
3B1.3 (Abuse of Position of Trust or Use of Special Skill)	8	0.6	100.0
4B1.2 (Definitions for Career Offender)	8	0.6	75.0
1B1.10 (Retroactivity of Amended Guideline Ranges)	7	0.6	71.4
7B1.1 (Classifications of Violations)	7	0.6	100.0
Constitutional Issues	63	5.1	88.9
Other Guidelines	130	10.4	83.8
Other Non-guideline Issues	294	23.6	86.7

¹Based on 755 "Post-Blakely" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 755 of these cases which cited 1,322 issues. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. The "Other" category includes all issues appealed fewer than seven times among relevant cases.

²Affirmance Rate includes all appeals cases not reversed by the circuit court.

SOURCE: U.S. Sentencing Commission, 2004 Appeals Datafile, APPFY04.