

**Table 57**

**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANTS<sup>1</sup>  
Fiscal Year 2004, Pre-Blakely (October 1, 2003, through June 24, 2004)**

<b>GUIDELINE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>TOTAL</b>	<b>7,259</b>	<b>100.0</b>	<b>93.7</b>
2L1.2 (Unlawfully Entering or Remaining in the United States)	966	13.3	98.9
2D1.1 (Drug Trafficking)	652	9.0	95.9
5K2.0 (Departures)	250	3.4	90.8
3B1.2 (Mitigating Role)	218	3.0	96.8
3C1.1 (Obstruction of Justice)	206	2.8	90.8
3E1.1 (Acceptance of Responsibility)	198	2.7	92.9
3B1.1 (Aggravating Role)	173	2.4	93.1
2K2.1 (Firearms)	163	2.2	90.8
2F1.1 (Fraud)	118	1.6	92.4
1B1.3 (Relevant Conduct)	117	1.6	93.2
7B1.3 (Revocation of Probation or Supervised Release)	111	1.5	96.4
4A1.2 (Definitions and Instructions of Criminal History)	105	1.4	91.4
5K1.1 (Substantial Assistance to Authorities)	102	1.4	97.1
4B1.1 (Career Offender)	99	1.4	92.9
4A1.3 (Adequacy of Criminal History)	99	1.4	95.0
5C1.2 (Limitation on Applicability of Statutory Minimums)	88	1.2	95.4
2B1.1 (Larceny, Embezzlement, and Theft)	88	1.2	84.1
4A1.1 (Criminal History Category)	85	1.2	94.1
5E1.1 (Restitution)	80	1.1	77.5
7B1.4 (Term of Imprisonment)	79	1.1	92.4
5D1.3 (Conditions of Supervised Release)	72	1.0	88.9
1B1.10 (Retroactivity of Amended Guideline Ranges)	60	0.8	98.3
5G1.3 (Defendant Subject to Undischarged Term of Imprisonment)	55	0.8	89.1
4B1.2 (Definitions for Career Offender)	43	0.6	88.4
2B3.1 (Robbery)	42	0.6	88.1
3B1.3 (Abuse of Position of Trust or Use of Special Skill)	39	0.5	89.7
4B1.4 (Armed Career Criminal)	39	0.5	97.4
5E1.2 (Fines for Individual Defendants)	34	0.5	73.5
2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien)	32	0.4	93.7
5K2.13 (Diminished Capacity)	32	0.4	93.7
Constitutional Issues	328	4.5	93.9
Other Guidelines	746	10.3	87.7
Other Non-guideline Issues	1,740	24.0	95.4

<sup>1</sup>Based on 3,882 "Pre-Blakely" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 3,882 of these cases which cited 7,415 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 30 times among relevant cases.

<sup>2</sup>Affirmance Rate includes all appeals cases not reversed by the circuit court.

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