

Table 59

**SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES
AND REASONABLENESS ISSUES¹
Fiscal Year 2013**

ISSUE	N	%	Affirmance Rate ²
REASONABLENESS ISSUES	4,753	100.0	92.1
Procedural: Court improperly calculated guidelines range	2,397	50.4	88.5
Substantive: Unreasonable weighing decision	626	13.2	97.9
Substantive: General	597	12.6	96.6
Procedural: Court failed to address/improperly considered 3553(a) factors	404	8.5	95.3
Procedural: Court did not adequately explain the chosen sentence	272	5.7	90.8
Procedural: General	125	2.6	90.4
Procedural: Court selected a sentence based on clearly erroneous facts	99	2.1	91.9
Substantive: Lack of empirical basis of a guideline	96	2.0	100.0
Procedural: Court did not treat the guidelines as advisory	52	1.1	94.2
General reasonableness challenge	40	0.8	100.0
Presumptive reasonableness of a guidelines range sentence	27	0.6	100.0
Procedural: Lack of empirical basis for a guideline	18	0.4	100.0
DRUG TRAFFICKING (§2D1.1)	323	100.0	74.8
Challenge to weight/amount of drugs involved in the offense	108	33.4	91.7
Question regarding dangerous weapon possession (§2D1.1(a)(1)-(5))	66	20.4	92.4
Challenge to weight/amount of drugs based on court's relevant conduct determination	41	12.7	87.8
Application of mandatory minimum/enhancement/notice statute/21 U.S.C. §§ 841, 846, or 851	24	7.4	91.7
Other issues appealed	84	26.0	86.9
CRIMINAL HISTORY GUIDELINES (Chapter 4)	458	100.0	89.3
Determination that prior offenses meet criterion for Armed Career Criminal (§4B1.4)	107	23.4	90.6
Application of career offender definition of "crime of violence" (§4B1.2)	37	8.1	78.4
Definition of prior sentence (§4A1.2(a))	24	5.2	91.7
Downward departure - overrepresented criminal history (§4A1.3)	24	5.2	100.0
Commission of instant offense while under criminal justice sentence (§4A1.1(d))	21	4.6	85.7
Other issues appealed	245	53.5	89.8
IMMIGRATION AND NATURALIZATION OFFENSES (Chapter 2, Part L)	225	100.0	88.4
Challenge based on prior conviction for a "crime of violence" (§2L1.2)	116	51.6	89.7
Challenge based on prior conviction for a drug trafficking offense (§2L1.2)	42	18.7	83.3
Double counting issues (§2L1.2)	20	8.9	100.0
Other issues appealed	47	20.9	85.1

¹ Based on 5,686 appeals with sentencing as at least one of the reasons for appeal. Often more than one issue was appealed; consequently, the number of issues is more than the number of sentencing appeals. The "Other issues appealed" category includes all issues appealed fewer than twenty times.

² Affirmance rate includes all appeals cases not reversed or directly remanded by the courts of appeal.

SOURCE: U.S. Sentencing Commission, 2013 Appeals Datafile, APPFY13.