

Table 59

**SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES<sup>1</sup>**  
**Fiscal Year 1999**

ISSUE	Number	Percent	Affirmance Rate <sup>2</sup>
<b>DRUG TRAFFICKING (§2D1.1)</b>	<b>1,025</b>	<b>100.0</b>	<b>94.2</b>
Challenge to weight/amount of drugs involved in the offense	299	29.2	92.3
Question regarding dangerous weapon possession	224	21.9	97.3
Challenge to weight/amount of drugs involved based on relevant conduct	189	18.4	92.6
Definition of mixture of substance	79	7.7	94.9
Equal protection/due process challenge to penalty for cocaine base	50	4.9	100.0
Application and definition issues	46	4.5	95.6
Application of mandatory minimum statute/21 U.S.C. §§ 841, 846, or 851	28	2.7	89.3
Sentence entrapment/manipulation	20	2.0	90.0
Double counting issue involving weapon possession and 18 U.S.C. § 924(c)	19	1.9	100.0
Question regarding marijuana plants	10	1.0	100.0
Other issues appealed	61	6.0	91.8
<b>ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)</b>	<b>658</b>	<b>100.0</b>	<b>95.0</b>
Whether defendant was a minor participant in the offense (§3B1.2)	216	32.8	95.8
Determination that defendant was an organizer or leader (§3B1.1)	182	27.7	94.0
Whether defendant was a minimal participant in the offense (§3B1.2)	88	13.4	98.9
Determination that defendant was a manager or supervisor (§3B1.1)	88	13.4	90.9
Questions regarding application of enhancement and level of culpability (§3B1.1)	33	5.0	100.0
Question regarding application of reduction and level of culpability (§3B1.2)	32	4.9	96.9
Other issues appealed	19	2.9	84.2
<b>ACCEPTANCE OF RESPONSIBILITY (§3E1.1)</b>	<b>326</b>	<b>100.0</b>	<b>94.2</b>
Application and definition issues	120	36.8	96.7
Challenge to denial of adjustment because of failure to admit conduct	57	17.5	98.2
Challenge to refusal to grant one-level reduction	55	16.9	90.9
Denial of §3E1.1 based on falsely denying relevant conduct	35	10.7	97.1
Denial of §3E1.1 because of applicability of §3C1.1	26	8.0	96.2
Challenge to granting adjustment	13	4.4	69.2
Other issues appealed	20	6.1	85.0
<b>DEPARTURE GUIDELINES (Chapter 5, Part H and K)</b>	<b>793</b>	<b>100.0</b>	<b>89.9</b>
Challenge to court's refusal to make downward departure	255	32.2	96.1
Challenge to government's refusal to make substantial assistance motion (no plea)	60	7.6	95.0
Challenge to factors used in making an upward departure	35	4.4	80.0
District court mistakenly believed it had no authority to depart	32	4.0	87.5
Challenge to court's refusal to make downward departure for diminished capacity	27	3.4	100.0
Challenge to factors used in making a downward departure	25	3.2	52.0
Co-defendant disparity as basis for departure	23	2.9	87.0
Downward departure - single act of aberrant behavior	21	2.6	81.0
Challenge to extent of departure (§5K1.1)	19	2.4	100.0
Challenge to court's refusal to depart based on family responsibilities	18	2.3	100.0
Challenge to court's refusal to make downward departure for substantial assistance	17	2.1	88.2
Challenge to upward departure - combination of factors	17	2.1	94.1
Challenge to court's refusal to make downward departure based on physical condition	16	2.0	100.0
Challenge to extent of departure	16	2.0	75.0
Challenge to court's refusal to make a downward departure based on coercion	16	2.0	100.0
Other mitigating circumstances as a basis for departure	13	1.6	92.3
Other issues appealed	183	23.1	84.2

**Table 59 (cont.)**

<b>ISSUE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>CRIMINAL HISTORY GUIDELINES (Chapter 4)</b>	<b>501</b>	<b>100.0</b>	<b>89.2</b>
§4A1.2(c) precludes counting of certain prior sentences	58	11.6	98.3
Downward departure - overrepresented criminal history (§4A1.3)	49	9.8	98.0
Upward departure - category didn't reflect seriousness of defendant's criminal history	39	7.8	94.9
Definition of related cases (§4A1.2)	33	6.6	78.8
Determination that prior offenses meet criterion set forth in §4B1.1	29	5.8	75.9
General determination as career offender	27	5.4	88.9
Application of career offender definition of "crime of violence" (§4B1.2)	23	4.6	82.6
Determination that prior offenses meet criterion for enhancement (§4B1.4)	21	4.2	85.7
Question regarding related cases and calculation of criminal history	17	3.4	94.1
Defendant claims prior convictions unconstitutional	11	2.2	100.0
Application and definition of "two prior felony convictions" (§4B1.2)	11	2.2	72.7
§4A1.1(c) precludes counting of certain prior sentences	10	2.0	90.0
Other issues appealed	173	34.5	89.0
<b>FRAUD AND DECEIT (§2F1.1)</b>	<b>225</b>	<b>100.0</b>	<b>85.8</b>
Challenge to the calculation of loss	143	63.6	84.6
More than minimal planning	25	11.1	96.0
Application and definition issues	19	8.4	94.7
Other issues appealed	38	16.9	78.9

<sup>1</sup>Based on 4,068 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 4,052 of these cases which cited 6,816 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 ten times among relevant cases.

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

SOURCE: U.S. Sentencing Commission, 1999 Appeals Datafile, APPFY99.