

Table 59

SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES¹
Fiscal Year 2003

ISSUE	Number	Percent	Affirmance Rate²
DRUG TRAFFICKING (§2D1.1)	745	100.0	95.7
Challenge to weight/amount of drugs involved in the offense	386	51.8	95.6
Question regarding dangerous weapon possession	125	16.8	95.2
Application and definition issues	79	10.6	96.2
Application of mandatory minimum statute/21 U.S.C. §§ 841, 846, or 851	45	6.0	93.3
Challenge to weight/amount of drugs based on relevant conduct determination	17	2.3	100.0
Other issues appealed	93	12.5	96.8
ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)	364	100.0	94.5
Whether defendant was a minor participant in the offense (§3B1.2)	147	40.4	94.6
Determination that defendant was an organizer or leader (§3B1.1)	118	32.4	96.6
Determination that defendant was a manager or supervisor (§3B1.1)	42	11.5	92.9
Whether defendant was a minimal participant in the offense (§3B1.2)	27	7.4	96.3
Other issues appealed	30	8.2	86.7
ACCEPTANCE OF RESPONSIBILITY (§3E1.1)	236	100.0	89.8
Challenge to denial of adjustment because of failure to admit conduct	53	22.5	100.0
Application and definition issues	51	21.6	82.4
Denial of §3E1.1 because of applicability of §3C1.1	41	17.4	95.1
Challenge to refusal to grant one-level reduction	29	12.3	75.9
Burden of proof issues	19	8.0	94.7
Denial of §3E1.1 based on falsely denying relevant conduct	16	6.8	100.0
Other issues appealed	27	11.4	81.5
DEPARTURE GUIDELINES (Chapter 5, Part H and K)	661	100.0	88.0
Challenge to court's refusal to make downward departure	197	29.8	97.5
District court mistakenly believed it had no authority to depart	36	5.4	88.9
Challenge to court's refusal to make downward departure for substantial assistance	34	5.1	97.1
Challenge to factors used in making an upward departure	33	5.0	90.9
Challenge to government's refusal to make substantial assistance motion (no plea)	32	4.8	96.9
Challenge to factors used in making a downward departure	27	4.1	18.5
Co-defendant disparity as basis for departure	24	3.6	95.8
Challenge to court's refusal to depart based on family responsibilities	18	2.7	100.0
Challenge to the extent of the departure	18	2.7	88.9
Challenge to downward departure - single act of aberrant behavior	18	2.7	77.8
Challenge to court's refusal to make downward departure for diminished capacity	16	2.4	93.8
Challenge to the extent of the departure under (§5K1.1)	15	2.3	100.0
Challenge to court's refusal to make downward departure based on physical condition	11	1.7	100.0
Challenge to government's refusal to make motion; breach of plea agreement (§5K1.1)	11	1.7	90.9
Other issues appealed	171	25.9	80.1

ISSUE	Number	Percent	Affirmance Rate²
CRIMINAL HISTORY GUIDELINES (Chapter 4)	541	100.0	91.1
General determination as career offender	82	15.2	95.1
Application of career offender definition of "crime of violence" (§4B1.2)	33	6.1	84.8
Downward departure - overrepresented criminal history (§4A1.3)	31	5.7	87.1
Definition of related cases (§4A1.2)	28	5.2	96.3
Upward departure - category didn't reflect seriousness of defendant's criminal history	26	4.8	96.2
Question regarding related cases and calculation of criminal history	22	4.1	95.4
§4A1.2(c) precludes counting of certain prior sentences	18	3.3	88.9
Definition of prior sentence (§4A1.2)	17	3.1	88.2
Court believed it lacked authority to depart (§4A1.3)	16	3.0	87.5
Determination that prior offenses meet criterion set forth in §4B1.1	14	2.6	85.7
Other downward departure issues (§4A1.3)	13	2.4	92.3
Upward departure - calculation of extent of departure (§4A1.3)	11	2.0	72.7
Other upward departure issues (§4A1.3)	11	2.0	90.9
Category does not reflect likelihood defendant will commit other crimes	11	2.0	100.0
§4A1.1(c) precludes counting of certain prior sentences	10	1.8	90.0
Other issues appealed	198	36.6	90.9
FRAUD AND DECEIT (§2F1.1 and §2B1.1)	186	100.0	86.0
Challenge to the calculation of loss	94	50.5	88.3
Application and definition issues	34	18.3	76.5
More than minimal planning	20	10.8	95.0
Application of specific offense characteristics (§2B1.1)	12	6.4	91.7
Other issues appealed	26	14.0	80.7
IMMIGRATION AND NATURALIZATION OFFENSES (Chapter 2 Part L)	728	100.0	95.0
Challenge to "previously deported for an aggravated felony" adjustment (§2L1.2)	201	27.6	90.0
Challenge to "previously deported for a felony" adjustment (§2L1.2)	128	17.6	100.0
Application and definition issues (§2L1.2)	99	13.6	90.9
Application and definition issues (§2L1.1)	11	1.5	81.8
Other issues appealed	289	39.7	98.3

¹Based on 4,393 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 4,392 of these cases which cited 7,895 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.

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