

**Table 58**

**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT<sup>1</sup>**  
**Fiscal Year 2004, Post-Blakely (June 25, 2004, through September 30, 2004)**

<b>GUIDELINE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>TOTAL</b>	<b>77</b>	<b>100.0</b>	<b>28.6</b>
5K2.0 (Departures)	13	16.9	7.7
2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)	10	13.0	50.0
4A1.3 (Adequacy of Criminal History)	5	6.5	0.0
5E1.1 (Restitution)	5	6.5	100.0
2D1.1 (Drug Trafficking)	4	5.2	25.0
3B1.2 (Mitigating Role)	4	5.2	100.0
4A1.2 (Definitions and Instructions for Criminal History)	4	5.2	25.0
5H1.6 (Family Ties and Responsibilities)	3	3.9	33.3
4B1.1 (Career Offender)	2	2.6	0.0
4B1.2 (Definitions for Career Offender)	2	2.6	0.0
5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases)	2	2.6	50.0
5K1.1 (Substantial Assistance to Authorities)	2	2.6	0.0
5K2.11 (Lesser Harms)	2	2.6	50.0
5K2.13 (Diminished Capacity)	2	2.6	0.0
Constitutional Issues	0	0.0	NA
Other Guidelines	13	16.9	15.4
Other Non-guideline Issues	4	5.2	0.0

<sup>1</sup>Based 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 two 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.