

Table 57

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE DEFENDANT¹
Fiscal Year 2009

GUIDELINE	N	%	Affirmance Rate²
TOTAL	14,414	100.0	93.6
2D1.1 (Drug Trafficking)	2,507	17.4	94.5
18 U.S.C. § 3553(a) Factors	1,751	12.1	95.4
1B1.10 (Retroactivity of Amended Guideline Ranges)	1,477	10.2	96.8
2L1.2 (Unlawfully Entering or Remaining in the United States)	502	3.5	93.4
2K2.1 (Firearms)	394	2.7	87.1
2B1.1 (Larceny, Embezzlement, and Theft)	320	2.2	93.1
7B1.3 (Revocation of Probation or Supervised Release)	226	1.6	96.9
3B1.1 (Aggravating Role)	204	1.4	94.1
4B1.1 (Career Offender)	204	1.4	89.2
3E1.1 (Acceptance of Responsibility)	169	1.2	98.8
3B1.2 (Mitigating Role)	157	1.1	97.4
4B1.4 (Armed Career Criminal)	155	1.1	76.8
3C1.1 (Obstruction of Justice)	146	1.0	95.9
5K2.0 (Departures)	141	1.0	94.3
5E1.1 (Restitution)	136	0.9	83.8
4A1.1 (Criminal History Category)	131	0.9	94.7
2G2.2 (Trafficking Material Involving Sexual Exploitation of Minors)	123	0.9	95.9
7B1.4 (Term of Imprisonment)	114	0.8	95.6
5C1.2 (Limitation on Applicability of Statutory Minimums)	102	0.7	98.0
4A1.3 (Adequacy of Criminal History)	99	0.7	96.0
2B3.1 (Robbery)	97	0.7	96.9
4A1.2 (Definitions and Instructions of Criminal History)	97	0.7	89.7
5K1.1 (Substantial Assistance to Authorities)	96	0.7	97.9
6A1.3 (Resolution of Disputed Factors)	94	0.7	90.4
5D1.3 (Conditions of Supervised Release)	91	0.6	81.3
1B1.3 (Relevant Conduct)	87	0.6	89.7
5G1.3 (Imposition of Sentence; Defendant Subject to Undischarged Term of Prison)	84	0.6	88.1
4B1.2 (Definitions for Career Offender)	75	0.5	66.7
5D1.2 (Term of Supervised Release)	65	0.5	76.9
3B1.3 (Abuse of Position of Trust or Use of Special Skill)	50	0.3	90.0
Constitutional Issues	2,440	16.9	96.6
Other Guidelines	851	5.9	89.2
Other Non-guideline Issues	1,229	8.5	89.6

¹Based on 6,470 appeals by defendants 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 defendants. The "Other Guidelines" category includes all issues appealed fewer than 50 times.

²Affirmance Rate includes all appeals cases not reversed or directly remanded by the court of appeals.