

Table 59

SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES¹
Fiscal Year 2011

ISSUE	N	%	Affirmance Rate ²
REASONABLENESS ISSUES	3,830	100.0	95.2
Substantive: General	788	20.6	99.8
Procedural: Court failed to address/improperly considered 3553(a) factors	704	18.4	95.2
Substantive: Unreasonable weighing decision	630	16.4	99.0
Procedural: Court did not adequately explain the chosen sentence	535	14.0	91.4
Procedural: Court improperly calculated guidelines range	297	7.8	79.8
General reasonableness challenge	260	6.8	99.6
Procedural: General	175	4.6	96.5
Procedural: Court did not treat the guidelines as advisory	122	3.2	100.0
Procedural: Court selected a sentence based on clearly erroneous facts	104	2.7	84.6
Substantive: Lack of empirical basis of a guideline	104	2.7	100.0
Presumptive reasonableness of a guidelines range sentence	72	1.9	97.2
Procedural: Lack of empirical basis for a guideline	39	1.0	100.0
18 U.S.C. § 3553 FACTORS	1,416	100.0	97.5
18 U.S.C. § 3553(a) greater than necessary	402	28.4	99.2
History and characteristics of the defendant (18 U.S.C. § 3553(a)(1))	368	26.0	98.4
Avoiding unwarranted disparities between co-defendants (18 U.S.C. § 3553(a)(6))	133	9.4	97.7
18 U.S.C. § 3553(a): Other unwarranted disparities	124	8.8	96.8
Nature and circumstances of the offense (18 U.S.C. § 3553(a)(1))	115	8.1	100.0
Disparities in districts without “fast track programs” (18 U.S.C. § 3553(a)(6))	78	5.5	94.9
Seriousness, respect for the law and just punishment (18 U.S.C. § 3553(a)(2)(A))	50	3.5	100.0
Defendant’s correctional treatment (18 U.S.C. § 3553(a)(2)(D))	44	3.1	75.0
Protect the public (18 U.S.C. § 3553(a)(2)(C))	35	2.5	91.4
Afford adequate deterrence (18 U.S.C. § 3553(a)(2)(B))	32	2.3	96.9
Other issues appealed	35	2.5	97.1
DRUG TRAFFICKING (§2D1.1)	980	100.0	92.8
Amendment 706, 711, 713, 715 two-level reduction for cocaine base (crack)	396	40.4	92.4
Challenge to weight/amount of drugs involved in the offense	128	13.1	96.7
Cocaine base (crack)/powder sentencing disparity	115	11.7	89.6
Question regarding dangerous weapon possession	101	10.3	97.0
Application of mandatory minimum/enhancement/notice statute/21 U.S.C. §§ 841, 846, or 851	98	10.0	85.7
Challenge to weight/amount of drugs based on court’s relevant conduct determination	69	7.0	94.2
Fair Sentencing Act (Amendment 748), mitigating role cap; changes to quantity table	21	2.1	95.2
Other issues appealed	52	5.3	94.2
OTHER NON-GUIDELINE ISSUES	1,378	100.0	87.5
Plea bargain issues/Rule 11 issues, not stipulations	637	46.2	97.0
Specifics unknown	39	2.8	66.7
Rule 36 issues (challenge to prior convictions based on <i>Begay/Chambers</i>)	38	2.8	52.6
Challenges to the application of mandatory minimum	36	2.6	94.4
Adequacy of 18 U.S.C. 3553(c) statement of reasons	35	2.5	62.9
Sentence exceeds statutory maximum	31	2.3	61.3
Rule 35 issues (correction or reduction of sentences)	28	2.0	75.0
Policy disagreement with the sentencing guidelines	20	1.5	85.0
Other general legal or statutory issues	458	33.2	81.9
Other issues appealed	56	4.1	96.4

Table 59 (cont.)

ISSUE	N	%	Affirmance Rate²
DEPARTURE GUIDELINES (Chapter 5, Parts H and K)	223	100.0	94.6
Rule 35(b) - reduction of sentence	26	11.7	88.5
Other issues appealed	197	88.3	95.9
CRIMINAL HISTORY GUIDELINES (Chapter 4)	675	100.0	87.7
Determination that prior offenses meet criterion for Armed Career Criminal (§4B1.4)	121	17.9	75.2
Determination that prior offenses meet criterion set forth in §4B1.1 (Career Offender)	69	10.2	84.1
Application of career offender definition of “crime of violence” (§4B1.2)	50	7.4	84.0
General determination as career offender (§4B1.1)	37	5.5	91.9
Downward departure - overrepresented criminal history (§4A1.3)	35	5.2	97.1
Upward departure - category did not reflect seriousness of criminal history (§4A1.3)	35	5.2	97.1
Amendment 742 - adjustment for recency (§4A1.1)	32	4.7	93.8
§4A1.1(d) - Adjustment for commission of instant offense while under criminal sentence	21	3.1	95.2
Double counting issues (§4A1.1)	21	3.1	100.0
§4A1.2 precludes counting of certain prior sentences	20	3.0	85.0
Other issues appealed	234	34.7	90.2
FRAUD AND DECEIT (§2F1.1 and §2B1.1)	267	100.0	86.5
Challenge to loss amount/calculation (§2B1.1)	134	50.2	88.1
Challenge to the number of victims (§2B1.1)	40	15.0	85.0
Challenge that the offense involved sophisticated means (§2B1.1)	33	12.4	93.9
Other issues appealed	60	22.5	80.0
IMMIGRATION AND NATURALIZATION OFFENSES (Chapter 2, Part L)	364	100.0	91.5
Challenge based on prior conviction for a “crime of violence” (§2L1.2)	109	29.9	93.6
Double counting issues (§2L1.2)	82	22.5	100.0
Challenge based on prior conviction for “aggravated felony” (§2L1.2)	36	9.9	66.7
Challenge based on prior conviction for a drug trafficking offense (§2L1.2)	30	8.2	90.0
Other issues appealed	107	29.4	91.6
ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)	327	100.0	96.0
Whether defendant was a minor participant in the offense (§3B1.2)	107	32.7	97.2
Determination that defendant was an organizer or leader of five or more (§3B1.1)	79	24.2	93.7
Determination that defendant was an organizer or manager of five or less (§3B1.1)	57	17.4	96.5
Determination that defendant was a manager or supervisor of five or more (§3B1.1)	44	13.5	95.4
Other issues appealed	40	12.2	97.5

¹ Based on 5,875 appeals with sentencing as at least one of the reasons for appeal. Information on issues was available in 5,846 of these cases which cited 13,178 issues. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. 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, 2011 Appeals Datafile, APPFY11.