

Table 57

**GUIDELINE FORMING THE BASIS FOR REVERSAL OR REMAND IN
DEFENDANT APPEALS OF THE ORIGINAL SENTENCE¹
Fiscal Year 2017**

GUIDELINE	N	%
NUMBER OF DEFENDANT APPEALS	535	--
3B1.2 (Mitigating Role)	48	9.0
5E1.1 (Restitution)	45	8.4
4B1.4 (Armed Career Criminal)	38	7.1
5D1.3 (Conditions of Supervised Release)	35	6.5
2L1.2 (Unlawfully Entering or Remaining in the United States)	25	4.7
2D1.1 (Drug Trafficking)	18	3.4
2B1.1 (Larceny, Embezzlement, and Theft)	17	3.2
2K2.1 (Firearms)	16	3.0
4B1.2 (Definitions for Career Offender)	16	3.0
1B1.3 (Relevant Conduct)	10	1.9
3C1.1 (Obstruction of Justice)	10	1.9
5D1.2 (Terms of Supervised Release)	10	1.9
4B1.1 (Career Offender)	9	1.7
6A1.3 (Resolution of Disputed Factors)	7	1.3
2K2.4 (Use of Firearms/Armor-Piercing Ammunition in Relation to Certain Crimes)	6	1.1
5E1.4 (Forfeiture)	6	1.1
3B1.1 (Aggravating Role)	5	0.9
1B1.11 (Use of Guidelines Manual in Effect at Sentencing)	4	0.7
2G2.2 (Trafficking Material Involving Sexual Exploitation of Minors)	4	0.7
3B1.3 (Abuse of Position of Trust or Use of Special Skill)	4	0.7
4A1.2 (Definitions and Instructions of Criminal History)	4	0.7
5E1.2 (Fines for Individual Defendants)	4	0.7
5G1.2 (Sentencing on Multiple Counts of Conviction)	4	0.7
2B3.1 (Robbery)	3	0.6
2T1.1 (Tax Evasion)	3	0.6
3E1.1 (Acceptance of Responsibility)	3	0.6
5K1.1 (Substantial Assistance to Authorities)	3	0.6
Reasonableness Issues	395	73.8
Constitutional Issues	7	1.3
Other Guidelines	29	5.4
Other Non-guideline Issues	185	34.6

¹ Based on 3,419 appeals by defendants of the original sentence. Of these 3,419 cases, 2,885 were excluded because the lower court sentence was affirmed by the circuit court. Often more than one issue was appealed; consequently, the number of guidelines or other issues listed is more than the number of cases appealed by the defendant and the percent column ("%") does not add to 100%. If more than one issue involving a guideline was appealed in the same appeal that guideline was counted only once. The "Other Guidelines" category includes all guideline issues appealed less than three times.

SOURCE: U.S. Sentencing Commission, 2017 Appeals Datafile, APPFY17.