

Table 57

SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES¹
Fiscal Year 1997

ISSUE	Number	Percent	Affirmance Rate²
DRUG TRAFFICKING (§2D1.1)	1,018	100.0	92.9
Challenge to weight/amount of drugs involved based on relevant conduct	332	32.6	93.8
Question regarding dangerous weapon possession	189	18.6	89.4
Definition of mixture of substance	111	10.9	90.1
Equal Protection/Due Process challenge to penalty for cocaine base	104	10.2	99.0
Challenge to weight/amount of drugs involved in the offense	73	7.2	87.7
Rule of lenity for crack cocaine	46	4.5	100.0
Double counting issue involving weapon possession and 18 U.S.C. § 924(c)	30	3.0	76.7
Sentence entrapment/manipulation	29	2.8	93.1
Application of mandatory minimum statute/ 21 U.S.C. §§ 841, 846 or 851	28	2.8	92.9
Application and definition issues	19	1.9	100.0
Question regarding marijuana plants	10	1.0	100.0
Other issues appealed	47	4.6	87.2
ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)	546	100.0	96.3
Determination that defendant was an organizer or leader (§3B1.1)	190	34.8	92.6
Whether defendant was a minor participant in the offense (§3B1.2)	161	29.5	100.0
Whether defendant was a minimal participant in the offense (§3B1.2)	79	14.5	96.2
Question regarding application of reduction and level of culpability (§3B1.2)	47	8.6	97.9
Determination that defendant was a manager or supervisor (§3B1.1)	45	8.2	97.8
Questions regarding application of enhancement and level of culpability (§3B1.1)	14	2.6	92.9
Other issues appealed	10	1.8	100.0
ACCEPTANCE OF RESPONSIBILITY (§3E1.1)	310	100.0	94.5
Application and definition issues	193	62.3	97.4
Challenge to refusal to grant one-level reduction	39	12.6	82.0
Challenge to denial of adjustment because of failure to admit conduct	33	10.6	100.0
Denial of §3E1.1 based on falsely denying relevant conduct	14	4.5	100.0
Denial of §3E1.1 because of applicability of §3C1.1	10	3.2	100.0
Other issues appealed	21	6.8	76.2
DEPARTURE GUIDELINES (Chapter 5, Part H and K)	638	100.0	88.4
Challenge to court's refusal to make downward departure	109	17.1	95.4
Other mitigating circumstances for departure	44	6.9	79.6
District court mistakenly believed it had no authority to depart	44	6.9	88.6
Challenge to government's refusal to make motion; breach of plea agreement (§5K1.1)	37	5.8	89.2
Challenge to court's refusal to make downward departure for diminished capacity	30	4.7	90.0
Co-defendant disparity as basis for departure	23	3.6	91.3
Challenge to factors used in making an upward departure	21	3.3	90.5
Challenge to court's refusal to make downward departure for substantial assistance	21	3.3	85.7
Challenge to government's refusal to make substantial assistance motion (no plea)	20	3.1	90.0
Challenge to extent of departure (§5K1.1)	18	2.8	100.0
Other aggravating circumstances as basis for departure	17	2.7	94.1
Downward departure - single act of aberrant behavior	16	2.5	87.5
Challenge to extent of departure	15	2.4	86.7
Challenge to court's refusal to make downward departure based on physical condition	12	1.9	100.0
Challenge to court's refusal to depart based on family responsibilities	10	1.6	100.0
Challenge to upward departure - guideline range does not reflect seriousness of conduct	10	1.6	100.0
Other issues appealed	191	30.0	82.2

Table 57 (cont.)

ISSUE	Number	Percent	Affirmance Rate
CRIMINAL HISTORY GUIDELINES (Chapter 4)	412	100.0	93.9
Question regarding related cases and calculation of criminal history	47	11.4	93.6
Determination that prior offenses meet criterion set forth in §4B1.1	33	8.0	97.0
General determination as career offender	31	7.5	96.8
Definition of related cases (§4A1.2)	29	7.0	86.2
Downward departure - overrepresented criminal history (§4A1.3)	28	6.8	100.0
Determination that prior offenses meet criterion for enhancement (§4B1.4)	18	4.4	94.6
Upward departure - category didn't reflect seriousness of defendant's criminal history	17	4.1	100.0
Application of career offender definition of "crime of violence" (§4B1.2)	16	3.9	100.0
Defendant claims prior conviction unconstitutional (§§4B1.4, 4A1.2, 4B1.1)	12	2.9	100.0
Defendant's conviction not subject to Armed Career Criminal enhancement (§4B1.4)	10	2.4	90.0
Other issues appealed	171	41.5	91.8
FRAUD AND DECEIT (§2F1.1)	218	100.0	88.1
Challenge to the calculation of loss	140	64.2	86.4
More than minimal planning	23	10.6	100.0
Application and definition issues	20	9.2	85.0
Question regarding definition of loss	15	6.9	100.0
Challenge to misrepresentation or violation of judicial order adjustment	10	4.6	70.0
Other issues appealed	10	4.6	90.0

¹Based on 3,692 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 3,368 of these cases which cited 5,552 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.

SOURCE: U.S. Sentencing Commission, 1997 Appeals Datafile, APPFY97.