

Table 59

SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES¹
Fiscal Year 2000

ISSUE	Number	Percent	Affirmance Rate²
DRUG TRAFFICKING (§2D1.1)	843	100.0	91.2
Challenge to weight/amount of drugs involved based on relevant conduct	240	28.5	93.3
Challenge to weight/amount of drugs involved in the offense	224	26.6	93.8
Question regarding dangerous weapon possession	169	20.0	96.4
Definition of mixture of substance	57	6.8	93.0
Application and definition issues	49	5.8	75.5
Application of mandatory minimum statute/21 U.S.C. §§ 841, 846, or 851	27	3.2	51.8
Other issues appealed	77	9.1	88.3
ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)	565	100.0	94.7
Whether defendant was a minor participant in the offense (§3B1.2)	209	37.0	97.1
Determination that defendant was an organizer or leader (§3B1.1)	184	32.6	91.8
Determination that defendant was a manager or supervisor (§3B1.1)	69	12.2	92.8
Whether defendant was a minimal participant in the offense (§3B1.2)	46	8.1	95.6
Question regarding application of reduction and level of culpability (§3B1.1)	22	3.9	90.9
Questions regarding application of enhancement and level of culpability (§3B1.2)	17	3.0	100.0
Other issues appealed	18	3.2	100.0
ACCEPTANCE OF RESPONSIBILITY (§3E1.1)	270	100.0	95.2
Application and definition issues	109	40.4	94.5
Challenge to denial of adjustment because of failure to admit conduct	61	22.6	96.7
Denial of §3E1.1 because of applicability of §3C1.1	32	11.9	100.0
Challenge to refusal to grant one-level reduction	32	11.9	87.5
Denial of §3E1.1 based on falsely denying relevant conduct	15	5.6	100.0
Other issues appealed	21	7.8	95.2
DEPARTURE GUIDELINES (Chapter 5, Part H and K)	697	100.0	91.8
Challenge to court's refusal to make downward departure	222	31.9	96.4
Challenge to government's refusal to make substantial assistance motion (no plea)	52	7.5	98.1
Other mitigating circumstances for departure	33	4.7	87.9
District court mistakenly believed it had no authority to depart	25	3.6	76.0
Co-defendant disparity as basis for departure	23	3.3	100.0
Challenge to court's refusal to make downward departure for diminished capacity	23	3.3	100.0
Downward departure - single act of aberrant behavior	21	3.0	57.1
Challenge to court's refusal to make downward departure based on physical condition	20	2.9	95.0
Challenge to court's refusal to depart based on family responsibilities	19	2.7	100.0
Challenge to government's refusal to make motion; breach of plea agreement (§5K1.1)	17	2.4	88.2
Other aggravating circumstances as basis for departure	11	1.6	90.9
Challenge to factors used in making an downward departure	10	1.4	40.0
Challenge to court's refusal to make downward departure for substantial assistance	10	1.4	100.0
Other issues appealed	211	30.3	91.5

Table 59 (cont.)

ISSUE	Number	Percent	Affirmance Rate²
CRIMINAL HISTORY GUIDELINES (Chapter 4)	437	100.0	93.8
Downward departure - overrepresented criminal history (§4A1.3)	42	9.6	92.9
Question regarding related cases and calculation of criminal history	40	9.2	100.0
General determination as career offender	35	8.0	100.0
Definition of related cases (§4A1.2)	26	6.0	96.2
Determination that prior offenses meet criterion set forth in §4B1.1	26	6.0	84.6
Upward departure - category didn't reflect seriousness of defendant's criminal history	24	5.5	100.0
Application of career offender definition of "crime of violence" (§4B1.2)	16	3.7	100.0
Determination that prior offenses meet criterion for enhancement (§4B1.4)	15	3.4	86.7
§4A1.2(c) precludes counting of certain prior sentences	14	3.2	100.0
Definition of prior sentence (§4A1.2)	13	3.0	100.0
Application of procedures set out in guideline (§4A1.1)	10	2.3	100.0
Prior sentence doesn't meet criteria set forth in §4A1.2(c)(1) and thus should not be counted	10	2.3	90.0
Other issues appealed	166	38.0	90.4
FRAUD AND DECEIT (§2F1.1)	146	100.0	87.7
Challenge to the calculation of loss	93	63.7	89.2
Application and definition issues	18	12.3	72.2
More than minimal planning	14	9.6	100.0
Other issues appealed	21	14.4	85.7

¹Based on 3,800 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 3,791 of these cases which cited 5,916 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, 2000 Appeals Datafile, APPFY00.