

Table 57

SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES¹
Fiscal Year 1998

ISSUE	Number	Percent	Affirmance Rate²
DRUG TRAFFICKING (§2D1.1)	949	100.0	96.2
Challenge to weight/amount of drugs involved based on relevant conduct	405	42.7	96.3
Question regarding dangerous weapon possession	195	20.5	97.4
Definition of mixture of substance	96	10.1	93.8
Challenge to weight/amount of drugs involved in the offense	68	7.2	97.1
Equal Protection/Due Process challenge to penalty for cocaine base	58	6.1	100.0
Application of mandatory minimum statute/21 U.S.C. §§ 841, 846, or 851	51	5.4	84.3
Sentence entrapment/manipulation	18	1.9	100.0
Question regarding marijuana plants	11	1.2	100.0
Other issues appealed	47	5.0	100.0
ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)	450	100.0	95.8
Determination that defendant was an organizer, leader, manager or supervisor (§3B1.1)	174	38.7	96.6
Whether defendant was a minor participant in the offense (§3B1.2)	123	27.3	98.4
Question regarding application of reduction and level of culpability (§3B1.2)	60	13.3	93.3
Determination that defendant was a manager or supervisor (§3B1.1)	49	10.9	93.9
Whether defendant was a minimal participant in the offense (§3B1.2)	30	6.7	100.0
Other issues appealed	14	3.1	71.4
ACCEPTANCE OF RESPONSIBILITY (§3E1.1)	278	100.0	95.3
Application and definition issues	219	78.8	98.2
Challenge to refusal to grant one-level reduction	28	10.1	71.4
Challenge to denial of adjustment because of failure to admit conduct	10	3.6	100.0
Other issues appealed	21	7.6	95.2
DEPARTURE GUIDELINES (Chapter 5, Part H and K)	607	100.0	89.1
Challenge to court's refusal to make downward departure	161	26.5	95.0
District court mistakenly believed it had no authority to depart	47	7.7	85.1
Challenge to government's refusal to make motion; breach of plea agreement (§5K1.1)	33	5.4	93.9
Co-defendant disparity as basis for departure	32	5.3	96.9
Challenge to factors used in making an upward departure	30	4.9	76.7
Challenge to government's refusal to make substantial assistance motion (no plea)	25	4.1	96.0
Rule 35b - Reduction of sentence (§5K1.1)	25	4.1	84.0
Challenge to court's refusal to depart based on family responsibilities	24	4.0	95.8
Challenge to extent of departure (§5K1.1)	24	4.0	100.0
Challenge to factors used in making a downward departure	20	3.3	35.0
Downward departure - single act of aberrant behavior	18	3.0	66.7
Challenge to extent of departure	14	2.3	100.0
Challenge to court's refusal to make downward departure for coercion and duress	14	2.3	100.0
Challenge to court's refusal to make downward departure based on diminished capacity	12	2.0	100.0
Challenge to court's refusal to make downward departure based on physical condition	11	1.8	90.9
Other issues appealed	117	19.3	91.4

Table 57 (cont.)

ISSUE	Number	Percent	Affirmance Rate²
CRIMINAL HISTORY GUIDELINES (Chapter 4)	375	100.0	92.3
Determination that prior offenses meet criterion set forth in §4B1.1	31	8.3	96.8
Question regarding related cases and calculation of criminal history	29	7.7	100.0
Downward departure - overrepresented criminal history (§4A1.3)	28	7.5	100.0
Upward departure - category didn't reflect seriousness of defendant's criminal history	22	5.9	86.4
Application of career offender definition of "crime of violence" (§4B1.2)	22	5.9	95.4
Determination that prior offenses meet criterion for enhancement (§4B1.4)	22	5.9	77.3
§4A1.1(c) precludes counting of certain prior sentences	21	5.6	100.0
Definition of related cases (§4A1.2)	17	4.5	94.1
Prior conviction is beyond time period for §4A1.2(e)	12	3.2	100.0
Defendant claims prior conviction unconstitutional (§§4B1.4, 4A1.2, 4B1.1)	11	2.9	81.8
Category does not reflect likelihood that defendant will commit other crimes	11	2.9	100.0
Upward departure - departure above criminal history category VI (§4A1.3)	10	2.7	100.0
Definition of violent felony (§4B1.4)	10	2.7	100.0
Other issues appealed	129	34.4	87.6
FRAUD AND DECEIT (§2F1.1)	235	100.0	91.9
Challenge to the calculation of loss	151	64.3	92.0
More than minimal planning	30	12.8	90.0
Question regarding definition of loss	22	9.4	86.4
Application and definition issues	18	7.7	94.4
Other issues appealed	14	6.0	100.0

¹Based on 3,654 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 3,635 of these cases which cited 5,511 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.

Table 57 (cont.)

SOURCE: U.S. Sentencing Commission, 1998 Appeals Datafile, APPFY98.