

Table 59

**SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES¹
Fiscal Year 2002**

ISSUE	Number	Percent	Affirmance Rate²
DRUG TRAFFICKING (§2D1.1)	1,332	100.0	92.2
Challenge to weight/amount of drugs involved in the offense	694	52.1	90.6
Application and definition issues	214	16.1	96.3
Question regarding dangerous weapon possession	178	13.4	94.9
Challenge to weight/amount of drugs involved based on relevant conduct	94	7.1	91.5
Application of mandatory minimum statute/21 U.S.C. §§ 841, 846, or 851	43	3.2	81.4
§2D1.1(b)(4) two level increase	11	0.8	90.9
Other issues appealed	98	7.4	94.9
ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)	544	100.0	94.5
Whether defendant was a minor participant in the offense (§3B1.2)	198	36.4	97.5
Determination that defendant was an organizer or leader (§3B1.1)	176	32.4	92.6
Determination that defendant was a manager or supervisor (§3B1.1)	57	10.5	98.2
Whether defendant was a minimal participant in the offense (§3B1.2)	49	9.0	91.8
Question regarding application of reduction and level of culpability (§3B1.1)	26	4.8	92.3
Question regarding application of reduction and level of culpability (§3B1.2)	16	2.9	93.8
Other issues appealed	22	4.0	81.8
ACCEPTANCE OF RESPONSIBILITY (§3E1.1)	261	100.0	95.4
Application and definition issues	117	44.8	96.6
Challenge to denial of adjustment because of failure to admit conduct	56	21.5	94.6
Challenge to refusal to grant one-level reduction	31	11.9	93.6
Denial of §3E1.1 because of applicability of §3C1.1	28	10.7	100.0
Challenge to denial of §3E1.1 based on falsely denying relevant conduct	12	4.6	100.0
Other issues appealed	17	6.5	82.4
DEPARTURE GUIDELINES (Chapter 5, Part H and K)	711	100.0	91.1
Challenge to court's refusal to make downward departure	200	28.1	97.5
Challenge to government's refusal to make substantial assistance motion (no plea)	45	6.3	91.1
District court mistakenly believed it had no authority to depart	39	5.5	92.3
Challenge to the extent of the departure (§5K1.1)	26	3.7	100.0
Downward departure - single act of aberrant behavior	25	3.5	84.0
Challenge to court's refusal to make downward departure for diminished capacity	24	3.4	91.7
Co-defendant disparity as basis for departure	22	3.1	95.4
Challenge to court's refusal to make downward departure for substantial assistance	21	3.0	100.0
Challenge to court's refusal to depart based on family responsibilities	20	2.8	100.0
Other mitigating circumstances for departure	20	2.8	80.0
Challenge to court's refusal to make downward departure based on physical condition	19	2.7	100.0
Challenge to factors used in making a downward departure	19	2.7	31.6
Challenge to factors used in making an upward departure	17	2.4	94.1
Challenge to government's refusal to make motion; breach of plea agreement (§5K1.1)	16	2.2	93.8
Challenge to the extent of the departure	14	1.7	85.7
Other issues appealed	184	25.9	91.8

Table 59 (cont.)

ISSUE	Number	Percent	Affirmance Rate²
CRIMINAL HISTORY GUIDELINES (Chapter 4)	611	100.0	88.0
General determination as career offender	65	10.6	90.8
Question regarding related cases and calculation of criminal history	51	8.3	88.2
Downward departure - overrepresented criminal history (§4A1.3)	43	7.0	93.0
Upward departure - category didn't reflect seriousness of defendant's criminal history	43	7.0	86.0
Determination that prior offenses meet criterion set forth in §4B1.1	41	6.7	87.8
Definition of related cases (§4A1.2)	37	6.1	94.6
Application of procedures set out in guideline (§4A1.1)	31	5.1	90.3
Determination that prior offenses meet criterion for enhancement (§4B1.4)	25	4.1	92.0
Application of career offender definition of "crime of violence" (§4B1.2)	23	3.8	78.3
Definition of prior sentence (§4A1.2)	17	2.8	88.2
§4A1.2(c) precludes counting of certain prior sentences	13	2.1	84.6
§4A1.2(d) precludes counting of juvenile convictions	13	2.1	69.2
Defendant's conviction not subject to armed career criminal enhancement (§4B1.4)	13	2.1	92.3
Application of definition of "two prior felony convictions" (§4B1.2)	12	2.0	83.3
Prior conviction is beyond time period of §4A1.2(e)	11	1.8	81.8
§4A1.1(c) precludes counting of certain prior sentences	10	1.6	80.0
Other issues appealed	163	26.7	87.1
IMMIGRATION OFFENSES (Chapter 2 Section L)	588	100.0	91.3
Challenge to previously deported for aggravated felony adjustment (§2L1.2)	374	63.6	90.1
Application and definition issues (§2L1.2)	92	15.6	94.6
Challenge to previously deported for a felony adjustment (§2L1.2)	62	10.5	96.8
Application and definition issues (§2L1.1)	18	3.1	77.8
Other issues appealed	42	7.1	92.9
FRAUD AND DECEIT (§2F1.1)	148	100.0	89.2
Challenge to the calculation of loss	88	59.5	90.9
Application and definition issues	25	16.9	88.0
More than minimal planning	15	10.1	93.3
Other issues appealed	20	13.5	80.0

¹Based on 4,530 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 4,530 of these cases which cited 9,100 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, 2002 Appeals Datafile, APPFY02.