

Table 52

**SENTENCING ISSUES APPEALED FOR SELECT GUIDELINES<sup>1</sup>**  
**(October 1, 1995, through September 30, 1996)**

<b>ISSUE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>DRUG TRAFFICKING (§2D1.1)</b>	<b>1,174</b>	<b>100.0</b>	<b>93.2</b>
Challenge to weight/amount of drugs involved based on relevant conduct	418	35.6	91.4
Equal Protection/Due Process challenge to penalty for cocaine base	171	14.6	100.0
Question regarding dangerous weapon possession	148	12.6	90.5
Challenge to weight/amount of drugs involved in the offense	139	11.8	95.7
Rule of lenity for crack cocaine	62	5.3	98.4
Application of mandatory minimum statute/ 21 U.S.C. §§ 841, 846 or 851	55	4.7	89.1
Sentence entrapment/manipulation	39	3.3	100.0
Definition of mixture of substance	27	2.3	92.6
Challenge to drug equivalency table	12	1.0	66.7
Definition of mixture of substance	11	0.9	72.7
Application and definition issues	11	0.9	100.0
Other issues appealed	81	6.9	90.1
<b>ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)</b>	<b>589</b>	<b>100.0</b>	<b>93.7</b>
Determination that defendant was an organizer or leader (§3B1.1)	204	34.6	87.2
Whether defendant was a minor participant in the offense (§3B1.2)	144	24.4	99.3
Question regarding application of reduction and level of culpability	88	14.9	97.7
Whether defendant was a minimal participant in the offense (§3B1.2)	61	10.4	96.7
Determination that defendant was a manager or supervisor (§3B1.1)	53	9.0	92.4
Questions regarding application of enhancement and level of culpability	22	3.7	90.1
Other issues appealed	17	2.9	100.0
<b>ACCEPTANCE OF RESPONSIBILITY (§3E1.1)</b>	<b>369</b>	<b>100.0</b>	<b>95.7</b>
Application and definition issues	251	68.0	95.6
Challenge to refusal to grant one-level reduction	57	15.4	91.2
Denial of §3E1.1 because of applicability of §3C1.1	26	7.0	100.0
Admitting conduct comprising the offense(s) of conviction	17	4.6	100.0
Other issues appealed	18	4.9	100.0
<b>DEPARTURE GUIDELINES (Chapter 5, Part H and K)</b>	<b>823</b>	<b>100.0</b>	<b>90.0</b>
Challenge to court's refusal to make downward departure	162	19.7	98.8
District court mistakenly believed it had no authority to depart	69	8.4	98.6
Other mitigating circumstances for departure	59	7.2	78.0
Challenge to government's refusal to make motion; breach of plea agreement (§5K1.1)	41	5.0	97.6
Other aggravating circumstances as basis for departure	36	4.4	86.1
Codefendant disparity as basis for departure	31	3.8	100.0
Refusal of court to depart based on family responsibilities (§5H1.6)	29	3.5	96.6
Defendant claims to be entitled to departure; no government motion (§5K1.1)	24	2.9	100.0
Challenge to court's refusal to make downward departure for substantial assistance	23	2.8	95.6
Challenge to court's refusal to make downward departure for diminished capacity	23	2.8	100.0
Challenge to factors used in making an upward departure	21	2.6	85.7
Challenge to extent of departure	21	2.6	81.0
Challenge to extent of departure (§5K1.1)	21	2.6	95.2
Downward departure - single act of aberrant behavior	19	2.3	79.0
Challenge to upward departure - combination of factors	15	1.8	93.3
Challenge to upward departure based on extreme psychological injury	13	1.6	100.0
Challenge to court's refusal to make downward departure based on physical condition	11	1.3	100.0
Challenge to court's refusal to make downward departure for coercion and duress	11	1.3	100.0
Other issues appealed	194	23.6	76.8

**Table 52 (cont.)**

<b>ISSUE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate</b>
<b>CRIMINAL HISTORY GUIDELINES (Chapter 4)</b>	<b>523</b>	<b>100.0</b>	<b>89.3</b>
Application of career offender definition of "crime of violence" (§4B1.2)	35	6.7	88.9
Determination that prior offenses meet criterion for enhancement (§4B1.4)	32	6.1	93.8
Downward departure - overrepresented criminal history (§4A1.3)	31	5.9	90.3
Definition of related cases (§4A1.2)	30	5.7	100.0
Defendant claims prior conviction unconstitutional (§§4B1.4, 4A1.2, 4B1.1)	27	5.2	96.3
Question regarding related cases and calculation of criminal history	24	4.6	87.5
General determination as career offender	22	4.2	86.4
Determination that prior offenses meet criterion set forth in §4B1.1	22	4.2	100.0
Application of procedures set out in guideline (§4A1.1)	20	3.8	95.0
§4A1.2(c) precludes counting of certain prior sentences	16	3.1	68.8
Upward departure - departure above Criminal History Category VI	16	3.1	87.5
Definition of prior sentence (§4A1.2)	13	2.5	84.6
Application of definition of "two prior felony convictions" (§4B1.2)	13	2.5	92.3
Upward departure - calculation of extent of departure (§4A1.3)	11	2.1	90.9
Definition of violent felony	11	2.1	100.0
Prior conviction is beyond time period for §4A1.2(e)	10	1.9	90.0
Upward departure - prior unlawful conduct not accounted for (§4A1.3)	10	1.9	80.0
Upward departure - category didn't reflect seriousness of defendant's criminal history	10	1.9	100.0
Other issues appealed	170	32.5	86.5

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<sup>1</sup>Based on 4,262 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was unavailable in 223 cases. 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 provided fewer than ten times among relevant cases.

<sup>2</sup>Affirmance rate includes all appeals cases not reversed by the circuit court.

SOURCE: U.S. Sentencing Commission, 1996 Appeals Datafile, APPFY96.