

Table 59

**SENTENCING ISSUES APPEALED FOR SELECTED GUIDELINES<sup>1</sup>**  
**Fiscal Year 2001**

ISSUE	Number	Percent	Affirmance Rate <sup>2</sup>
<b>DRUG TRAFFICKING (§2D1.1)</b>	<b>857</b>	<b>100.0</b>	<b>88.9</b>
Challenge to weight/amount of drugs involved in the offense	413	48.2	88.9
Challenge to weight/amount of drugs involved based on relevant conduct	119	13.9	84.9
Question regarding dangerous weapon possession	112	13.1	94.6
Application and definition issues	101	11.8	84.2
Application of mandatory minimum statute/21 U.S.C. §§ 841, 846, or 851	29	3.4	89.7
Sentence entrapment/manipulation	10	1.2	90.0
Other issues appealed	73	8.5	100.0
<b>ROLE IN THE OFFENSE GUIDELINES (§§3B1.1, 3B1.2)</b>	<b>413</b>	<b>100.0</b>	<b>95.2</b>
Whether defendant was a minor participant in the offense (§3B1.2)	170	41.2	95.9
Determination that defendant was an organizer or leader (§3B1.1)	122	29.5	93.4
Whether defendant was a minimal participant in the offense (§3B1.2)	38	9.2	97.4
Determination that defendant was a manager or supervisor (§3B1.1)	31	7.5	93.6
Question regarding application of reduction and level of culpability (§3B1.1)	29	7.0	100.0
Question regarding application of reduction and level of culpability (§3B1.2)	13	3.2	84.6
Other issues appealed	10	2.4	100.0
<b>ACCEPTANCE OF RESPONSIBILITY (§3E1.1)</b>	<b>256</b>	<b>100.0</b>	<b>93.4</b>
Application and definition issues	98	38.3	94.9
Challenge to denial of adjustment because of failure to admit conduct	74	28.9	96.0
Challenge to refusal to grant one-level reduction	33	12.9	94.8
Denial of §3E1.1 because of applicability of §3C1.1	31	12.1	93.5
Other issues appealed	20	7.8	90.0
<b>DEPARTURE GUIDELINES (Chapter 5, Part H and K)</b>	<b>604</b>	<b>100.0</b>	<b>92.5</b>
Challenge to court's refusal to make downward departure	197	32.6	99.5
Challenge to government's refusal to make substantial assistance motion (no plea)	46	7.6	97.8
Other mitigating circumstances for departure	36	6.0	77.8
District court mistakenly believed it had no authority to depart	29	4.8	89.7
Challenge to court's refusal to make downward departure for diminished capacity	22	3.6	100.0
Co-defendant disparity as basis for departure	20	3.3	95.0
Challenge to court's refusal to make downward departure based on physical condition	16	2.6	100.0
Downward departure - single act of aberrant behavior	16	2.6	87.5
Challenge to government's refusal to make motion; breach of plea agreement (§5K1.1)	15	2.5	93.3
Challenge to court's refusal to make downward departure for substantial assistance	13	2.2	100.0
Challenge to court's refusal to depart based on family responsibilities	12	2.0	100.0
Challenge to factors used in making an upward departure	11	1.8	100.0
Challenge to the extent of the departure	10	1.7	80.0
Challenge to upward departure based on extreme psychological injury	10	1.7	100.0
Other issues appealed	151	25.0	82.8

**Table 59 (cont.)**

<b>ISSUE</b>	<b>Number</b>	<b>Percent</b>	<b>Affirmance Rate<sup>2</sup></b>
<b>CRIMINAL HISTORY GUIDELINES (Chapter 4)</b>	<b>434</b>	<b>100.0</b>	<b>89.4</b>
General determination as career offender	52	12.0	96.2
Downward departure - overrepresented criminal history (§4A1.3)	35	8.1	100.0
Definition of related cases (§4A1.2)	29	6.7	86.2
Application of career offender definition of "crime of violence" (§4B1.2)	27	6.2	85.2
Upward departure - category didn't reflect seriousness of defendant's criminal history	26	6.0	88.5
Application of procedures set out in guideline (§4A1.1)	24	5.5	95.8
Determination that prior offenses meet criterion set forth in §4B1.1	23	5.3	78.3
Question regarding related cases and calculation of criminal history	22	5.1	95.4
Definition of prior sentence (§4A1.2)	21	4.8	90.5
Determination that prior offenses meet criterion for enhancement (§4B1.4)	13	3.0	84.6
§4A1.2(c) precludes counting of certain prior sentences	12	2.8	75.0
§4A1.2(d) precludes counting of juvenile convictions	10	2.3	90.0
Other issues appealed	140	32.3	87.1
<b>IMMIGRATION OFFENSES (Chapter 2 Section L)</b>	<b>821</b>	<b>100.0</b>	<b>96.7</b>
Challenge to previously deported for aggravated felony adjustment (§2L1.2)	361	44.0	93.9
Application and definition issues (§2L1.2)	270	32.9	98.9
Challenge to previously deported for a felony adjustment (§2L1.2)	158	19.2	99.4
Other issues appealed	32	3.9	96.9
<b>FRAUD AND DECEIT (§2F1.1)</b>	<b>145</b>	<b>100.0</b>	<b>93.8</b>
Challenge to the calculation of loss	89	61.4	93.3
Application and definition issues	21	14.5	95.2
More than minimal planning	20	13.8	95.0
Other issues appealed	15	10.3	93.3

<sup>1</sup>Based on 4,275 appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 4,275 of these cases which cited 7,657 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.

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

SOURCE: U.S. Sentencing Commission, 2001 Appeals Datafile, APPFY01.