

This summary of District of Columbia appellate case law addresses four topics: availability of and general standards for appellate review, standards and allowable grounds for departure, constitutional requirements for proof of facts permitting upward departure (*Blakely v. Washington* issues), and constitutional requirements for proof of facts that increase the minimum sentence (*Alleyne v. United States* issues).

1. Availability of and General Standards for Appellate Review.

Appellate review of sentencing is extremely limited in the District of Columbia.¹ A sentence is only appealable if it is unlawful—if it falls outside statutory limits, raises Constitutional concerns, conflicts with another Federal or D.C. law, or if a court was without jurisdiction to impose it.² The D.C. Voluntary Sentencing Guidelines (“the Guidelines”) do not create any “legally enforceable rights” for either an appellant or the government, and so sentences may not be appealed solely on the ground that they are not compliant with the Guidelines.³

Appellate courts will not disturb trial courts’ factual findings unless they are clearly erroneous,⁴ but will review conclusions of law *de novo*.⁵ A trial court error not raised at trial is reviewed under the plain error standard: the appellate court will not reverse unless the error is so clearly prejudicial to substantial rights that it jeopardizes the very fairness and integrity of trial.⁶

¹ *Smith v. United States*, 837 A.2d 87, 100 (D.C. 2003) (citing *Williams v. United States*, 571 A.2d 212, 214 (D.C. 1990)) *see also Williams v. United States*, 106 A.3d 1063, 1072 (D.C. 2015) (“Generally, a sentence within statutory limits is not subject to review.”).

² D.C. Code § 23-110 (2017); *see Speaks v. United States*, 959 A.2d 712, 718 (D.C. 2008); *see Smith*, 837 A.2d at 100. In *Bradley v. D.C.*, 107 A.3d 586, 589 (D.C. 2015), for example, the sentencing judge relied on misinformation in determining the offender’s sentence and failed to disclose the information relied upon to the parties. The appellate court found this violated the Due Process Clause and remanded for sentencing by a different judge.

³ *Speaks*, 959 A.2d at 719-720. In *Speaks*, the appellate court refused to grant an appeal where the defendant claimed the trial judge relied on an erroneous interpretation of the sentencing guidelines. In doing so, the court reasoned: “Unlike the cases cited by appellant where appellate courts have reviewed the sentencing process, [the trial judge] did not fail to follow a statutorily-prescribed procedure in imposing sentence on appellant, rely on improper or inaccurate information, sentence a defendant unrepresented by counsel, consider representations by the government that violated a plea agreement with appellant, or fail or decline to exercise his discretion. In short, he did *not* do something he was legally required not to do, or *fail* to do something he was legally required to do.” *Id.* (emphasis in original). *See also Jenkins v. United States*, 80 A.3d 978, 1003 (D.C. 2013) citing *Saunders v. United States*, 975 A.2d 165, 167 (D.C. 2009) (“If the sentence is within the statutory maximum, as it is here, it is ‘unreviewable except for constitutional concerns.’”); *see Greene v. United States*, 571 A.2d 218, 220-21 (D.C. 1990)); *see also Gorbey v. United States*, 54 A.3d 668, 707 (D.C. 2012); *see also R.W. v. United States*, 958 A.2d 259, 265–66 (D.C. 2008).

⁴ *In re A.F.*, 875 A.2d 633, 635 (D.C. 2004). (citing *In re D.A.D.*, 763 A.2d 1152, 1155 (D.C. 2000)).

⁵ *Id.*

⁶ *Porter v. United States*, 826 A.2d 398, 406–7 (D.C. 2003); *McKenzie v. United States*, 659 A.2d 838, 841 (D.C. 1995), *cert. denied*, 517 U.S. 1127 (1996).

2. Standards and Allowable Grounds for Departure.

The advisory nature of the D.C. Guidelines affords the sentencing court broad discretion in sentencing. A court may depart from the sentencing guidelines to any extent, and a departure in itself is not a ground for appeal.⁷ This is true even if a judge consciously disregards the Guidelines in sentencing.⁸ Appellate courts give unqualified deference to trial courts' use and application of the Guidelines.⁹

3. Constitutional Requirements for Proof of Facts Permitting Upward Departure under *Blakely v. Washington*.

Only one D.C. court seems to have addressed the impact of *Blakely* on D.C.'s sentencing guidelines. In *R.W. v. United States*, the trial judge made an upward departure from the sentencing guidelines based on the court's finding that the defendant, "knew or should have known of victim's transgender status, which, the court reasoned, constituted a 'reduced physical capacity.'"¹⁰ The defendant appealed in part on the ground that, since the judge made the upward departure based on findings not submitted to a jury, the sentence violated his Sixth Amendment right to a jury trial. The appellate court found *Apprendi* and *Blakely* inapplicable because the trial court's sentence, while an upward departure from the guidelines, did not exceed the statutory maximum for that crime.¹¹ Thus, since the Guidelines are voluntary and do not replace any statutory maxima, a mere upward departure from the Guidelines does not implicate the same Constitutional concerns as *Blakely*.

4. Constitutional Requirements for Proof of Facts That Increase the Minimum Sentence under *Alleyne v. United States*.

There have been no cases interpreting the impact of *Alleyne* on the D.C. Sentencing Guidelines. "Most statutory minimums are either below or within the prison range in the lowest possible box for that offense and criminal history score, so that these statutory minimums do not conflict with Guidelines prison ranges."¹²

⁷ *Speaks*, 959 A.2d at 719 ("Inasmuch as the sentences imposed on appellant by the trial court concededly conformed to the statute, they may not be assailed on the sole ground that they are not compliant with the guidelines.")

⁸ *See id.* ("However, even had [the judge] concluded that the guidelines directed the imposition of concurrent sentences, he nevertheless could have chosen to impose consecutive sentences because (1) they were in compliance with the relevant statute, and (2) the guidelines were not binding and created no enforceable rights for appellant."); *id.* citing *Teasley v. State*, 54 Md. App. 454, 458 (1983) ("Whether . . . a trial judge scrupulously follows, outrageously flouts or clumsily misapplies the sentencing guidelines is simply none of our appellate business, unless . . . such flouting or misapplying should coincidentally trigger one or more of our more limited and traditional reasons for reviewing a sentence.")

⁹ *Id.* at 720 ("[W]here a trial judge's sentence was challenged based upon an assertion that the judge misinterpreted the guidelines, it is not our business to interpret the guidelines where they create no legally enforceable rights."); *R.W.*, 958 A.2d at 265 ("By design, the Voluntary Sentencing Guidelines are entirely voluntary, and judges are free to apply or ignore them as they see fit without interference by this Court.")

¹⁰ 958 A.2d at 263.

¹¹ *Id.* at 266–67.

¹² D.C. Voluntary Sentencing Guidelines Manual § 3.6 (2018)