NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 06 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. TAI WANG MAK, aka "Seal D," aka "Taihong Mak," aka "Daihong Mak," aka "Dahong Mai," Defendant - Appellant.	No. 08-50199 D.C. No. 8:05-cr-00293-CJC-3 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted March 3, 2009**
Pasadena, California

Before: O'SCANNLAIN, RYMER and WARDLAW, Circuit Judges.

Tai Mak was part of a conspiracy to give sensitive submarine warfare technology to the People's Republic of China. He pled guilty to violating 22

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 2778(b) (conspiracy to export defense articles), and was sentenced to the statutory maximum of ten years. We need not address the facts in detail here, as they are familiar to the parties. Tai Mak appeals his sentence, and we affirm.

First, Tai Mak claims that the trial judge procedurally erred by conducting a "reality check." In the reality check, the district court computed what Tai Mak's Guidelines range would have been had he been convicted of the same crime as lead conspirator Chi Mak. While we do not encourage hypothetical Guidelines calculations, we are not convinced that the district court committed plain error. *See United States v. Olano*, 507 U.S. 725, 734 (1993) (defining plain error).

Tai Mak next contends that his sentence created an unwarranted disparity with the sentence given to Chi Mak's wife, co-conspirator Rebecca Chiu. Given that the district court was more familiar with the facts of the case and that Chiu agreed to relinquish her citizenship as part of her sentence, we find no abuse of discretion here. Because the parties did not raise it, we do not consider what role, if any, the sentences given to co-defendants should play in the sentencing process. *See United States v. Saeteurn*, 504 F.3d 1175, 1181 (9th Cir. 2007) (noting the general consensus that 18 U.S.C. § 3553(a)(6) is not meant to address unwarranted disparities among co-defendants, but holding that the district court did not attempt to adjust sentences for proportionality in the case at bar).

Finally, Tai Mak argues that his 120-month sentence is substantively unreasonable. Although the Guidelines range was 63-78 months, the Guidelines are only advisory. The district court's reasons for imposing the statutory maximum — among others, that the offense was a great betrayal of trust and a threat to national security — establish that the sentence was substantively reasonable.

AFFIRMED.