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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. HOANG KIM VO, Defendant - Appellant.	No. 08-30373 D.C. No. 2:04-cr-00468-RSM MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Hoang Kim Vo appeals from the 90-month sentence imposed on remand for conspiracy to import ecstasy, in violation of 21 U.S.C. §§ 952(a), 960(b)(3), and 963. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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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).

SZ/Research

Vo contends that the district court violated Federal Rule of Criminal Procedure 32(i)(3)(B) by considering a controverted matter at sentencing without ruling on the dispute. The record indicates that the district court did not err because the disputed matter pertained to an obstruction of justice enhancement that the government requested, but withdrew on remand, and that the district court did not apply. Further, Vo did not dispute that she testified falsely. *See* Fed. R. Crim. P. 32(i)(3)(B).

Vo also contends that the district court procedurally erred by basing her sentence on clearly erroneous facts. This contention is belied by the record. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

AFFIRMED.