

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 07 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELDON LEWIS HUFFINE,

Defendant - Appellant.

No. 07-30071

D.C. No. CR-05-00019-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, Chief District Judge, Presiding

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Eldon Lewis Huffine appeals from the district court's judgment following his guilty-plea conviction for Social Security fraud, in violation of 42 U.S.C.

* 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).

§ 408(a)(5). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Huffine contends that the district court abused its discretion by denying his motion for the appointment of standby counsel to assist him in his self-representation. However, Huffine's unconditional guilty plea waived his right to appeal the denial of standby counsel. *See United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005).

Huffine also contends that the district court abused its discretion by denying his motion to withdraw his guilty plea before sentencing. However, Huffine failed to meet his burden of demonstrating a fair and just reason for withdrawing his plea before sentencing. *See Fed. R. Crim. P. 11(d)(2)(B)*. The district judge who accepted Huffine's guilty plea determined that Huffine had adequately discussed the plea with his counsel and understood the consequences. The thorough Rule 11 colloquy belies Huffine's contention that the plea was given under duress. Further, Huffine's belief, based upon his own reading of the statute, that he is actually innocent of the offense does not constitute "newly discovered evidence" supporting withdrawal of the guilty plea. *See United States v. Jones*, 472 F.3d 1136, 1141 (9th Cir. 2007). We conclude that the district court did not abuse its discretion. *See id.*

AFFIRMED.