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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>DOUGLAS JOHN FITZGERALD,</p> <p>Defendant - Appellant.</p>

No. 11-30200

D.C. No. 1:09-cr-00113-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief Judge, Presiding

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Douglas John Fitzgerald appeals pro se from his guilty-plea conviction to one count of attempting to evade and defeat tax, in violation of 26 U.S.C. § 7201.

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Fitzgerald contends that the district court erred by denying his motion to

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

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

withdraw his plea. He argues that he had two fair and just reasons for withdrawal. First, he contends that he was unaware that his plea agreement did not preserve his right to appeal the district court's denial of his motion to dismiss the indictment on Speedy Trial Act grounds. Second, he argues that he was unaware that he had a viable defense based on an absence of willfulness. The record belies these contentions. Accordingly, the district court did not abuse its discretion by denying the motion to withdraw. *See* Fed. R. Crim. P. 11(d)(2)(B); *United States v. Mayweather*, 634 F.3d 498, 504 (9th Cir. 2010).

To the extent that Fitzgerald contends that he received ineffective assistance of counsel, we decline to consider that contention on direct review. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir 2011).

AFFIRMED.