

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-30276
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 19, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALVIN THOMAS, III, also known as Fot Thomas,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:06-CR-294-10

Before REAVLEY, JONES, and PRADO, Circuit Judges.

PER CURIAM:*

Alvin Thomas, III, federal prisoner # 29962-034, was sentenced to 180 months in prison after he pleaded guilty to distributing 50 grams or more of cocaine base. He appeals the district court's denial of his motion to reconsider his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence. He also moves for the appointment of appellate counsel.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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As a threshold matter, the Government contends that Thomas's notice of appeal is untimely. The notice was stamped filed beyond the applicable 14-day period, and Thomas did not demonstrate that it was timely delivered to prison officials or deposited in the prison mail system. See FED. R. APP. P. 4(b)(1)(A)(i), (c). We ordinarily would remand for an excusable neglect or good cause determination, but we need not do so because the appeal is without merit. See *United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000).

Thomas's § 3582(c)(2) motion was based on the Fair Sentencing Act of 2010 (FSA) and the corresponding amendments to the Sentencing Guidelines. We may affirm the district court's judgment on any basis supported by the record. See *United States v. Clay*, 408 F.3d 214, 218 n.7 (5th Cir. 2005). Because Thomas was sentenced on January 7, 2008, or before the FSA's effective date of August 3, 2010, the FSA is not retroactively applicable to him. See *Dorsey v. United States*, 132 S. Ct. 2321, 2335-36 (2012); *United States v. Kelly*, 716 F.3d 180, 181 (5th Cir.), *cert. denied*, 134 S. Ct. 439 (2013).

The district court's judgment is AFFIRMED. Thomas's motion for the appointment of appellate counsel is DENIED.