

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

No. 13-40915
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RUDY GARCIA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:09-CR-478-1

Before CLEMENT, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Rudy Garcia, federal prisoner # 43334-279, appeals the denial of his motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). Garcia was convicted of conspiracy to possess with intent to distribute more than 50 grams of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and was sentenced to the statutory minimum of 120 months of imprisonment.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Garcia's § 3582(c)(2) motion was based on the Fair Sentencing Act of 2010 (FSA) and the corresponding amendments to the Sentencing Guidelines. Because Garcia was sentenced on November 17, 2009, 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, 180-82 (5th Cir.), *cert. denied*, 134 S. Ct. 439 (2013). Therefore, he remains subject to the pre-FSA statutory minimum sentence of 120 months and is thus ineligible for a sentence reduction. *See* § 3582(c)(2); U.S.S.G. § 1B1.10(a)(2)(B) & cmt. n.1(A). Accordingly, the district court did not abuse its discretion in denying Garcia's motion. *See United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009).

The district court's judgment is **AFFIRMED**. Garcia's incorporated motion to appoint counsel is **DENIED**.