

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

United States Court of Appeals
Fifth Circuit

FILED

April 17, 2012

Lyle W. Cayce
Clerk

No. 11-60272
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DESMOND BURNETT,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 2:10-CR-22-1

Before JONES, Chief Judge, and JOLLY and SMITH, Circuit Judges.

PER CURIAM:*

Desmond Burnett pleaded guilty to distributing methamphetamine and possessing with intent to distribute in excess of 5 grams of cocaine base. In his sole issue on appeal, he contends that the district court erred by refusing to apply the Fair Sentencing Act of 2010 (FSA) to his sentence. His argument is foreclosed by our decision in *United States v. Tickles*, 661 F.3d 212, 215 (5th Cir. 2011), *petitions for cert. filed* (Dec. 15, 2011) (No. 11-8023) *and* (Dec. 27, 2011) (No. 11-8268), which held that the FSA does not apply retroactively to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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defendants whose sentencing occurred after the FSA's effective date but whose offenses occurred before the effective date. Although the Supreme Court has recently granted certiorari in two Seventh Circuit cases that held that the FSA does not apply retroactively, our precedent is nevertheless binding. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 808 n.1 (5th Cir. 2008).

Accordingly, the judgment of the district court is **AFFIRMED**.