

**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.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

## No. 13-30276

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.