

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. 03-10230-JTM

MARICO M. LAFLORA,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the defendant Marico LaFlora's Motion to Vacate (Dkt. 66) his sentence pursuant to 28 U.S.C. § 2255, LaFlora arguing his sentence is infirm in light of *United States v. Davis*, 139 S.Ct. 2319 (2019). In 2004, LaFlora was convicted of one count of armed bank robbery and one count brandishing a firearm in furtherance of a crime of violence, and sentenced to 46 months for the bank robbery and 25 years for brandishing the firearm, yielding a controlling sentence of 346 months. (Dkt. 27). The Tenth Circuit affirmed LaFlora's conviction (Dkt. 45), and this court has denied his previous two § 2255 motions in 2007 and 2016. (Dkt. 57, 61).

Davis found that a conviction under the residual clause of 18 U.S.C. § 924(c)(3)(B) was unconstitutionally vague where the underlying conviction was premised on a conspiracy to commit Hobbs Act robbery. However, *Davis* has no application here because LaFlora was not convicted of conspiracy to commit robbery, but actual Hobbs

act robbery. *See United States v. Phoc Nguyen*, No. 94-10129-JTM, 2020 WL 4785427, at *1 (D. Kan. Aug. 18, 2020) (since defendant “was not charged merely with conspiracy, *Davis* is inapplicable”). As in *Phoc Nguyen*, the court denies defendant’s Motion to Vacate (Dkt. 66), and will not issue a certificate of appealability.

IT IS SO ORDERED this day of September, 2020.

s/ J. Thomas Marten
J. Thomas Marten, Judge