

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACOB A. AVILA,

Defendant.

Case No. 07-40148-01-DDC

**MEMORANDUM AND ORDER DISMISSING PETITIONER'S
MOTION UNDER § 2255**

Petitioner Jacob A. Avila filed a Motion to Vacate Sentence under 28 U.S.C. § 2255, arguing that the underlying crime on which his conviction was based—Hobbs Act robbery—is no longer considered a “crime of violence” in light of the Supreme Court’s decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). Doc. 25. But, on January 15, 2019, the Supreme Court issued a decision in *Stokeling v United States*, resolving this issue against Mr. Avila. 139 S. Ct. 544, 554–55 (2019).¹

In light of the *Stokeling* decision, Mr. Avila concedes that the Supreme Court has resolved the issue against him. Doc. 38 at 1. And Mr. Avila concedes that dismissal of his § 2255 motion is warranted. *Id.* at 2. The court thus dismisses Mr. Avila’s § 2255 motion because *Stokeling* conclusively precludes his argument seeking relief. Also, the court declines to issue a certificate of appealability because no reasonable jurist would find the court’s assessment of Mr.

¹ After *Stokeling*, the Tenth Circuit issued a decision in *United States v. Harris*, confirming that “Hobbs Act robbery is categorically a ‘crime of violence’ under [18 U.S.C.] § 924(c)(3)’s element clause.” __ F. App’x __, 2019 WL 360095, at *2 (10th Cir. Jan. 28, 2019) (recognizing that the Supreme Court decided *Stokeling* against petitioner’s argument that a Hobbs Act robbery conviction is not a “crime of violence” under § 924(c)(3)).

Avila's constitutional claims debatable or wrong. *See Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (explaining that, to secure a certificate of appealability, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" (citation and internal quotation marks omitted)).

IT IS THEREFORE ORDERED BY THE COURT THAT defendant Jacob A. Avila's Motion to Vacate Sentence (Doc. 25) is dismissed.

IT IS FURTHER ORDERED THAT no certificate of appealability shall issue.

IT IS SO ORDERED.

Dated this 28th day of February, 2019, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge