

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Nos. 12-10134-01-JTM (Criminal)
15-1139-JTM (Civil)

MARCOS A. GRAMAJO,

Defendant.

MEMORANDUM AND ORDER

This case is before the court the government's motion to dismiss defendant's motion to vacate sentence pursuant to 28 U.S.C. § 2255 (Dkt. 84). Defendant claims that the sentence enhancement based on U.S.S.G. §§ 2K2.1 and 4B1.2, is unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). For the reasons set forth below, this court grants the government's motion.

On May 2, 2016, the court previously found that defendant was eligible for a reduction in his sentence under the *Johnson* rule. (Dkt. 74). However, the United States Supreme Court subsequently held in *Beckles v. United States*, 137 S. Ct. 886, 890 (2017), that the residual clause under U.S.S.G. § 4B1.2(a)(2)—“defining a ‘crime of violence’ as an offense that ‘involves conduct that presents a serious potential risk of physical injury to another[]’”—was not unconstitutional. *Beckles*, 137 S. Ct. at 890 (holding that the advisory sentencing guidelines are not subject to vagueness challenges under the due process clause). *Beckles* abrogated the Tenth Circuit's decision in *United States v. Madrid*, 805 F.3d 1204, 1210 (10th Cir. 2015).

Beckles, 137 S. Ct. at 886. Consequently, the court finds that no new rule or constitutional law provides defendant an avenue for relief.

A certificate of appealability is not warranted in this case because reasonable jurists could not debate whether “the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citation omitted).

IT IS THEREFORE ORDERED that the government’s motion to dismiss (Dkt. 84) is granted.

IT IS FURTHER ORDERED that the court will not issue a certificate of appealability in this case.

Dated this 28th day of June, 2017, at Wichita, Kansas.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE