IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL GALINDO,

Case Nos. 12-10140-08-JTM (Criminal)
16-1246-JTM (Civil)

Defendant.

MEMORANDUM AND ORDER

This case is before the court on defendant's motion to vacate sentence pursuant to 28 U.S.C. § 2255 (Dkt. 329) and the government's motion to dismiss (Dkt. 338). Defendant claims that the sentence enhancement based on his career offender status under U.S.S.G. § 4B1.2, is unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). For the reasons set forth below, this court dismisses defendant's motion and grants the government's motion.

The United States Supreme Court in *Beckles v. United States*, 137 S. Ct. 886, 890 (2017), held 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 defendant's motion to vacate sentence pursuant to 28 U.S.C. § 2255 (Dkt. 329) is dismissed.

IT IS FURTHER ORDERED that government's motion to dismiss (Dkt. 338) is granted.

IT IS FURTHER ORDERED that defendant's pro se motion for appointment of counsel and waiver of personal appearance (Dkt. 327) is denied as moot.

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

Dated this 31st day of May, 2017, at Wichita, Kansas.

s/J. Thomas Marten
United States District Court