IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
Plaintiff,)) Case Nos.)	12-20153-02-CM (Criminal) 16-2471-CM (Civil)
KARLA MONROY MURILLO,)))	
Defendant.)))	

MEMORANDUM AND ORDER

This case is before the court on defendant Karla Monroy Murillo's motion "Seeking a Sentence Reduction Based on *Johnson v. United States* and Pursuant to 28 U.S.C. § 2255" (Doc. 174). *Johnson* held that the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii), is unconstitutionally vague. *See* 135 S. Ct. 2551, 2563 (2015).

Defendant pleaded guilty in 2013 to conspiring to distribute and possess with intent to distribute more than 50 grams of methamphetamine. In 2014, the court sentenced her to 65 months in prison. The court did not sentence defendant as a career offender under either the Armed Career Criminal Act or under U.S.S.G. § 4B1.1. In the absence of either of these determinations, *Johnson* does not apply. *Cf. United States v. Jenkins*, 613 F. App'x 754, 755 (10th Cir. 2015) (holding that *Johnson* did not apply for an enhancement that was not based on the residual clause of the Armed Career Criminal Act). This is true under the facts of this case regardless of the outcome of *Beckles v. United States*, No. 15-8544, which is now pending before the Supreme Court.

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 quotation marks and citation omitted).

IT IS THEREFORE ORDERED that defendant Karla Monroy Murillo's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 174) is denied.

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

Dated this 17th day of January, 2017, at Kansas City, Kansas.

s/ Carlos Murguia CARLOS MURGUIA United States District Judge