

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

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

DOMINIQUE LEE BOYLES,

Defendant/Petitioner.

No. 12-40127-01-JAR

No. 16-4086-JAR

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner Dominique Boyle’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 118). The Government has moved to dismiss Petitioner’s motion (Doc. 128). For the reasons stated below, the Government’s motion is granted.

Petitioner submits that his prior state conviction for criminal threat no longer serves as a predicate crime of violence under U.S.S.G. § 4B1.2, and in turn, prevents enhancement of the base offense level under U.S.S.G. § 2K2.1, in the wake of the Supreme Court’s decision in *Johnson v. United States*.¹

Petitioner’s motion can be sustained only under circumstances where the Supreme Court of the United States finds that the advisory Federal Sentencing Guidelines are subject to scrutiny on vagueness grounds and that *Johnson* in turn applies retroactively to the Guidelines. On March 6, 2017, however, the Supreme Court issued its opinion in *Beckles v. United States*, holding that “the Guidelines are not subject to a vagueness challenge under the Due Process

¹576 U.S. ---, 135 S. Ct. 2551 (2015).

Clause, [and] [t]he residual clause in § 4B1.2(a)(2) therefore is not void for vagueness.”²

Consequently, *Johnson* does not provide a retroactive gateway for Petitioner to challenge his sentence.

Accordingly, because Petitioner’s motion is founded on a vagueness challenge to a sentence imposed under the advisory Guidelines, and *Beckles* dictates that such an argument is unavailable to Petitioner, his motion to vacate sentence must be dismissed.

IT IS THEREFORE ORDERED BY THE COURT that the Government’s Motion to Dismiss Petitioner Dominique Boyle’s Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Doc. 128) is GRANTED; Petitioner’s § 2255 motion (Doc. 118) is hereby DISMISSED.

IT IS SO ORDERED.

Dated: May 19, 2017

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

²137 S. Ct. 886, 892 (2017).