

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT HOLMES, III,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:12-cv-00354-KJD-RJJ

ORDER

Before the court are petitioner's motion for relief from order and judgment (#7), respondents' opposition (#12), and petitioner's reply (#15). For the reasons stated below, the court denies the motion.

First, petitioner argues that the court erred in its determination that the restriction on probation contained in Nev. Rev. Stat. § 205.060(2) applied to him.¹ That statute provides, with emphasis added:

Except as otherwise provided in this section, a person convicted of burglary is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000. A person who is convicted of burglary and who has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be released on probation or granted a suspension of sentence.

Petitioner does not persuade the court that the emphasized portion of the statute applied to him. At the time of sentencing, he had not previously been convicted of burglary. Furthermore, all of the

¹To summarize petitioner's argument in the petition, his plea agreement was void because it stated that he was eligible for probation but the probation bar in § 205.060(2) applied to him.

1 prior crimes that petitioner describes in his petition and in his motion for relief involve entries into
2 business establishments, not dwellings. See, e.g., Motion for relief, at 8-9 (#7). Petitioner claims in
3 a conclusory fashion that he has forcibly entered or invaded dwellings, but his own factual
4 allegations do not bear out those claims.

5 Petitioner's remaining arguments are disagreements with the court's ruling, and they are not
6 appropriate for reconsideration. See Plotkin v. Pacific Tel. and Tel. Co., 688 F.2d 1291, 1293 (9th
7 Cir. 1982).

8 IT IS THEREFORE ORDERED that petitioner's motion for relief from order and judgment
9 (#7) is **DENIED**.

10 DATED: February 4, 2013

11
12 

13

KENT J. DAWSON
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28