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**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 is petitioner's motion for relief from judgment (#26) and respondents' opposition (#27). Petitioner again argues that his guilty plea was invalid because the plea agreement stated that he was eligible for probation, but that Nev. Rev. Stat. § 205.060(2) actually barred probation. The statute provides, in relevant part:

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's new argument is that "forcible entry" is a concept that is completely separate from "invasion of a dwelling." The court directs petitioner back to the ruling of Nevada Supreme Court in his own case: "Appellant alleged no other facts indicating that the attempted burglary conviction involved the forcible entry or invasion of a dwelling." Ex. 42, at 2. The Nevada Supreme Court interprets § 205.060(2) to bar probation when the person is convicted of a prior crime involving either forcible entry or invasion of a dwelling. The Nevada Supreme Court is the final word on interpretations of state law.


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Reasonable jurists would not find the court's conclusion to be debatable or wrong, and the court will not issue a certificate of appealability.

IT IS THEREFORE ORDERED that petitioner's motion for relief from judgment (#26) is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

DATED: January 31, 2014



KENT J. DAWSON
United States District Judge