UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN FLOYD VOSS,

Petitioner,

vs.

GREG COX, et al.

Respondents.

Case No. 3:11-CV-00223-LRH-(WGC)

ORDER

Petitioner has submitted a declaration of election to dismiss petition (#63). The court will dismiss this action.

Earlier, the court dismissed ground 1(d) on the merits. Order (#16). Petitioner was convicted of first-degree murder with the use of a deadly weapon. Petitioner received a sentence for first-degree murder, and he received an equal and consecutive sentence for the use of a deadly weapon, as required by the deadly-weapon enhancement statute in effect at the time. On appeal, the Nevada Supreme Court vacated the sentence for the use of a deadly weapon because insufficient evidence was presented to prove that petitioner used a deadly weapon in the commission of murder. Petitioner claimed in ground 1(d) that the sentence for murder also should have been vacated. The court determined that the relief that petitioner received on direct appeal was the correct relief, and that ground 1(d) was without merit. Order, pp. 1-2 (#16). Later, the court noted that under Nevada law, the use of a deadly weapon is an enhancement, not an element of the crime of first-degree murder. Order, p. 3 (#46) (citing Williams v. State, 671 P.2d 635, 636 (Nev. 1983)). Reasonable

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

IT IS THEREFORE ORDERED that this action is **DISMISSED** without prejudice. The clerk of the court shall enter judgment accordingly.

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

DATED this 10th day of January, 2012.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE