

/_/_/ Certificate of Appealability and leave to proceed *in forma pauperis* on appeal are **Denied**.

/_/_/ Petitioner has not made a substantial showing of the denial of a constitutional right.

/_/_/ The dismissal was justified by a plain procedural bar and jurists of reason would not find the procedural ruling debatable.

The Clerk of Court shall forthwith notify the parties of the entry of this Order regarding Certificate of Appealability and *In Forma Pauperis* Status on Appeal.

DATED this 10th day of September, 2008.


James A. Teilborg
United States District Judge

after the conclusion of Petitioner's first post-conviction relief petition by applying *Summers v. Schiro*, 481 F.3d 710 (9th Cir 2007). On further review, the Court notes that Petitioner did not plead guilty and, therefore, should not have received the benefit of *Summers*. However, the Court's ultimate conclusion, that the Petition is barred by the statute of limitations, is not impacted by the fact that the Court did not count some time against Petitioner's statute of limitations that should have been counted. *See* Doc. #27 at 2-3.