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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Danny Claude Cotton,
Petitioner/Appellant,

vs.

United States of America,

Respondents/Appellees,

CASE NO. CV 06-1819-PHX-JAT

ORDER

ON CERTIFICATE OF APPEALABILITY
AND IN FORMA PAUPERIS STATUS

Having examined the application of Danny Claude Cotton for issuance of a Certificate of Appealability from the order denying his Petition for a Writ of Habeas Corpus, the Court FINDS:

/X/ Certificate of Appealability and leave to proceed in forma pauperis on appeal are Granted.

/ / Petitioner has made a substantial showing of the denial of a constitutional right with respect to the following issue(s):

/X/ Petitioner has made an underlying claim that jurists of reason would find debatable and jurists of reason would find it debatable whether the district court was correct in the following procedural rulings:

1) is a stand alone claim of actual innocence available in a non-capital case? If question 1 is answered in the affirmative,

2) does a stand alone claim of actual innocence allow a petitioner to circumvent the AEDPA's 1-year statute of limitations, when after considering statutory and equitable tolling, the petition claiming actual innocence is barred by the statute of limitations? If question 2 is also answered in the affirmative,

3) does Petitioner's actual innocence claim in this case meet the extraordinarily high standard required under Carriger v. Stewart, 132 F.3d 463, 476-77 (9th Cir. 1997) (en banc)?

1 See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

2 The Court notes that in the Order finding the claim in this case barred by the statute of limitations, the Court gave Petitioner the benefit of not starting the statute of limitations until

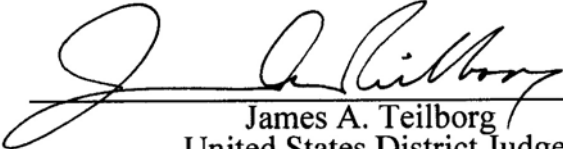
/\_/\_/ Certificate of Appealability and leave to proceed *in forma pauperis* on appeal are **Denied**.

/\_/\_/ 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 10<sup>th</sup> day of September, 2008.

  
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James A. Teilborg  
United States District Judge

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after the conclusion of Petitioner's first post-conviction relief petition by applying *Summers v. Schiro*, 481 F.3d 710 (9<sup>th</sup> 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.