

SEP 27 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AARON EDWARD PETTIJOHN,

Petitioner - Appellant,

v.

BARTOS, Warden; et al.,

Respondents - Appellees.

No. 07-15267

D.C. No. CV-06-948-NVW

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges

Aaron Edward Pettijohn, an Arizona state prisoner, appeals pro se from the dismissal as untimely of his 28 U.S.C. § 2254 habeas corpus petition claiming that his sentence was unconstitutional under *Blakely v. Washington*, 542 U.S. 296

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

(2004). He contends that his habeas petition was timely under 28 U.S.C. § 2244(d)(1)(C) because he filed a state court post-conviction petition within one year of *Blakely*. As stated by the district court, this contention lacks merit because the Supreme Court has not held that *Blakely* is retroactively applicable to cases on collateral review. See *Tyler v. Cain*, 533 U.S. 656, 662 (2001) (interpreting § 2244(b)(2)(A)); *Schardt v. Payne*, 414 F.3d 1025, 1038 (9th Cir. 2005), *cert. dismissed* (U.S. June 29, 2006) (No. 05-9237).

AFFIRMED.