

ORIGINAL

No. \_\_\_\_\_

04 - 5163

Supreme Court, U.S.  
FILED  
JUN 30 2004  
OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

Charles Medicine Blanket — PETITIONER  
(Your Name)

vs.

Rosebud Sioux Tribal Police — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charels Medicine Blanket, #98841

(Your Name)

Limon Correctional Facility  
49030 State Highway 71

(Address)

Limon, CO. 80826

(City, State, Zip Code)

None

(Phone Number)

**QUESTION(S) PRESENTED**

- 1) Did the U.S. District Court of South Dakota have jurisdiction to hear Petitioner's Section 1983 Action? And if not, what court is there to protect Petitioner's due process rights?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- 1) Unknown Officers of the Rosebud Sioux Indian Reservation Tribal Police Dept.
- 2) Officer Iyotte and Officer Decory of the Rosebud Sioux Tribal Police Dept.

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## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix   B   to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix   A   to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 24, 2004.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 6, 2004, and a copy of the order denying rehearing appears at Appendix c.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment of the United States Constitution

and

United States Code, Title 42, § 1983



## STATEMENT OF THE CASE

On September 25, 1997, Petitioner was stopped on the Rosebud Sioux Indian Reservation in Rosebud, South Dakota by the Rosebud Sioux Tribal Police. Allegedly the Rosebud Sioux Tribal Police arrested Petitioner on a federal warrant. Petitioner was taken to the Rosebud Sioux Tribal Jail and two days later was released to the custody of a U.S. Marshal who transported Petitioner to a viaduct two miles outside of Wall, South Dakota and turned him over to two other U.S. Marshals. Those Marshals then transported Petitioner to the Pennington County Jail in Rapid City, S.D.

On Sept. 30, 1997, Petitioner was taken in front of a Pennington County Dist. Court Judge where he (and Petitioner's cousin), was advised that there was a warrant out of Colorado for their arrest. They were not advised of what the charges were, however, they were advised by the District Court Judge that they should return to Colorado to determine why they were wanted.

Petitioner was thus returned to Colorado, tried on several felony counts of sexual assault on a child. Petitioner was convicted on all counts and received a lengthy sentence in the Colorado Department of Corrections.

Since his conviction, Petitioner has tried numerous forms of relief, including filing a habeas action in the Rosebud Sioux Tribal Courts, several attempts at federal habeas relief, an attempt at review in the South Dakota State Courts, and the 42 U.S.C. § 1983 action being appealed here. None of these actions have ever reached the merits of Petitioner's claims and in fact the Rosebud Sioux Tribal Court actions have never even been ruled on.

In the action presented herein, Petitioner's case was denied for lack of jurisdiction and because it was determined that he was barred under South Dakota Statutes. On appeal the Eighth Circuit, ruled that the federal courts had no jurisdiction to resolve ongoing disputes surrounding internal tribal disputes. Petitioner contends that this decision is in error, that the question presented is a federal question, that the Rosebud Sioux Indian Reservation's statutes are what control the statute of limitations in this case and not the State of South Dakota's, and that the U.S. District Court did in fact have jurisdiction to hear Petitioner's case thus the granting of summary judgment was in error.

## REASONS FOR GRANTING THE PETITION

The Eighth Circuit Court of Appeals affirmed the U.S. District Court's granting of summary judgment to Respondents because 1) Petitioner allegedly failed to make the required showing to the District Court under Fed.R.Civ.P. 56(f); and 2) because Petitioner's case was a matter of ongoing litigation in the tribal courts, accordingly the U.S. Courts had no jurisdiction over Petitioner's case. Petitioner contends that this is error for the following reasons.

First, Appellant did provide the U.S. District Court with a sworn affidavit as required under Fed.R.Civ.P. 56(f). See id, see also, Stanbeck v. Best Divesified Products, Inc., 180 F.3d 903, 911 (8th Cir. 1999); Petitioner's Response to Respondent's Motion for Summary Judgment.

Fed.R.Civ.P. 56(f), allows for the postponing of summary judgment to allow for additional discovery. See e.g., United States v. Casino Magic Corp., 293 F.3d 419, 426 (8th Cir. 2002).

In this case, Petitioner had not been able to complete any discovery as his efforts were deliberately impeded by the Attorney General for Respondents'. Petitioner provided this information to the U.S. District Court, however, Petitioner's Motion to compel discovery and to impose sanctions went unheard. Had Petitioner been allowed discovery, disclosures, etc., he could have shown that: 1) his federal constitutional protections had indeed been violated by Respondents; 2) that those violations had cost Petitioner his tribal land which had been in his family for generations (thus allowing for motive of Respondents to lie as the Tribal Reservation is the one who ended up with Petitioner's land); and that through the filing of the tribal court actions, Respondents had waived any limitation of actions defense. Moreover, Petitioner would have shown that the question raised in his tribal actions was a federal question, i.e., that his procedural due process protections were violated.

While it is true that "Jurisdiction to resolve tribal disputes, interpret tribal constitutions, and laws,...lies with Indian tribes and not district courts." It is also true that indian territories are subject to providing its citizens (who are also citizens of the United States), those protections afforded under the United States Constitution and statutes. See In re Sac & Fox

Tribe of Mississippi in Iowa/Meskawi Casion Lit., 340 F.3d 749, 763 (8th Cir. 2003); United States v. Wheeler, 435 U.S. 313, 98 S.Ct. 1079, 1084 n.11 (1978).

In Wheeler, this Court held:

"Territorial government is entirely the creation of Congress and its judicial tribunal exert all their powers by authority of the United States....When a territorial government enacts and enforces criminal laws to govern its inhabitants, it is not acting as an independent political community like a state, but as 'an agency of the federal government'...."

It is undisputed that Indian tribes have the power to enforce their criminal laws against tribal members.. Although physically within the territory of the United States and subject to ultimate federal control. They nonetheless remain a 'separate people with the power of regulating their internal and social relations.'"

Id., 98 S.Ct. at 1085 (emphasis Petitioner's, internal cites omitted).

In this case, Petitioner was arrested by the Rosebud Sioux Tribal Police on a federal warrant. Accordingly, the Rosebud Sioux Tribal Police (Respondents) were acting as federal agents. In Petitioner's tribal actions challenging this arrest, Petitioner raised the claim that both his federal due process protections as well as those stated under the Rosebud Sioux Constitution were violated. However, those tribal actions have set in front of the tribal courts for years without a word, even though they were properly served. Accordingly, Petitioner filed an action in the U.S. District Court, which, under liberal construction standards should have been construed as requesting the federal courts to take jurisdiction over a timely action filed in the Tribal Courts which presented a federal question.

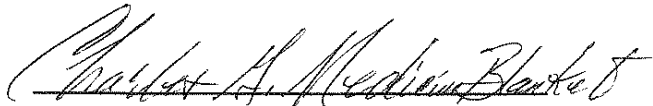
It is clear that the State of South Dakota's statutes of limitations have no bearing on this case and that a proper federal question has been presented. Moreover, any procedural defense should have been raised in the tribal courts and since it was not, that defense has been waived. Finally, this is not an internal tribal dispute and the federal courts indeed have jurisdiction over Petitioner's claims and the granting of summary judgment and dismissal of Petitioner's appeal are reversible error.

As a result, Petitioner respectfully requests that this Court grant certiorari on the within issue and appoint counsel to represent Petitioner.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Charles G. Medicine Blanket, #98841

Date: June 29, 2004

Charles G. Medicine Blanket, #98841  
Limon Correctional Facility  
49030 State Highway 71  
Limon, CO. 80826

Pro-Se

United States Court of Appeals  
FOR THE EIGHTH CIRCUIT

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No. 03-3175

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Charles G. Medicine Blanket,

Appellant,

v.

Rosebud Sioux Tribal Police  
Department, and Unknown Officers,  
Redbud Sioux Indian Reservation;  
Officer Iyotte; Officer Decovy,

Appellees.

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Appeal from the United States  
District Court for the  
District of South Dakota

[UNPUBLISHED]

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Submitted: February 27, 2004

Filed: March 24, 2004

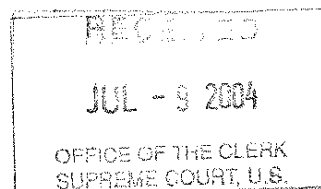
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Before **BYE**, **McMILLIAN**, and **RILEY**, Circuit Judges.

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PER CURIAM.

Charles G. Medicine Blanket appeals from the final judgment of the District Court for the District of South Dakota in this civil rights action arising out of Medicine Blanket's arrest on the Rosebud Sioux Indian Reservation. The district



court<sup>1</sup> granted summary judgment to defendants and denied Medicine Blanket's motion for reconsideration. For reversal, Medicine Blanket argues the district court erred in (1) finding his motion for reconsideration untimely, (2) prematurely granting summary judgment to defendants, and (3) finding his action was time-barred. For the reasons discussed below, we affirm the judgment of the district court.

While we agree with Medicine Blanket that his reconsideration motion was timely filed, see Fed. R. Civ. P. 59(e), 6(a), the error is harmless because the district court considered the merits of the motion. We also reject Medicine Blanket's argument that summary judgment was premature, given that he did not make the required showing to the district court under Fed. R. Civ. P. 56(f). See United States v. Casino Magic Corp., 293 F.3d 419, 426 (8th Cir. 2002).

As to the merits, we affirm the grant of summary judgment because Medicine Blanket's claims challenge the conduct of tribal officers on a reservation, and it appears that this matter is the subject of on-going litigation by Medicine Blanket in the tribal court system. See In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litigation, 340 F.3d 749, 763 (8th Cir. 2003) (jurisdiction to resolve internal tribal disputes and interpret tribal constitutions and laws lies with Indian tribes and not in district courts); Miller v. Benson, 51 F.3d 166, 170 (8th Cir. 1995) (appellate court may affirm judgment on any ground supported by the record).

Finally, we conclude that the district court did not abuse its discretion in denying Medicine Blanket's motion for reconsideration. See Perkins v. U.S. West Communications, 138 F.3d 336, 340 (8th Cir. 1998).

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<sup>1</sup>The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota.

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

FILED

JUL 02 2003

  
CLERK

CHARLES G. MEDICINE BLANKET, )  
Plaintiff, )

CIV. 02-5102-KES

vs. )

ROSEBUD SIOUX TRIBAL POLICE )  
DEPARTMENT AND UNKNOWN )  
OFFICERS, ROSEBUD SIOUX INDIAN )  
RESERVATION; OFFICER IYOTTE; and )  
OFFICER DECOVY, )  
Defendants. )

ORDER GRANTING  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT

Defendants move for summary judgment alleging that plaintiff's complaint is barred by the statute of limitations. Plaintiff opposes the motion.

Plaintiff alleges in his complaint that on September 26, 1997, police officers of the Rosebud Sioux Tribal Police violated his constitutional rights by illegally arresting him and depriving him of an extradition hearing. The suit was commenced pursuant to 42 U.S.C. § 1983. Plaintiff filed his pro se complaint on November 8, 2002.

"Summary judgment is appropriate when the record reveals that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Bell v. Fowler, 99 F.3d 262, 265 (8<sup>th</sup> Cir. 1996).

The United States Supreme Court held in Wilson v. Garcia, 471 U.S. 261, 266-68, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985), that state statutes of limitations govern the time limitations for lawsuits commenced under 42 U.S.C. § 1983. When a cause of action arises in South Dakota, a specific statute provides that civil rights actions must be commenced

“within three years after the alleged constitutional deprivation has occurred,” or the action will be barred. SDCL 15-2-15.2. See also Bell, 99 F.3d at 266.

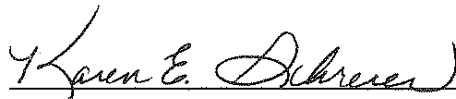
It is undisputed that the alleged actions of the Rosebud Sioux Tribal Police occurred in September of 1997 and that more than five years passed before plaintiff filed his lawsuit. Thus, plaintiff's cause of action is time-barred. Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment (Docket 22) is granted.

IT IS FURTHER ORDERED that plaintiff's motion to hold defendants in contempt for failure to comply with Rule 26(f) (Docket 26) is denied as moot.

Dated July 2, 2003.

BY THE COURT:



KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE

NOTICE OF ENTRY

The original of this document was entered on the docket of the Clerk of the United States District Court for the District of South Dakota on 7/3/03.

  
CLERK



UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 03-3175

Charles G. Medicine Blanket,

Appellant,

vs.

Rosebud Sioux Tribal Police  
Department, etc., et al.,

Appellees.

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Appeal from the United States  
District Court for the  
Western District of Missouri

The petition for rehearing by the panel filed by the appellant  
is denied.

(5193-010199)

May 6, 2004

Order Entered at the Direction of the Court:

*Michael E. Gonz*

Clerk, U.S. Court of Appeals, Eighth Circuit