



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

CHARLES CHIPPS,

Civ 10-5028

Petitioner,

v.

APPLICATION FOR WRIT OF
HABEAS CORPUS

OGLALA SIOUX TRIBAL COURT;
OGLALA SIOUX TRIBE DEPARTMENT
OF PUBLIC SAFETY; DARWIN LONG,
ADMINISTRATOR, OGLALA SIOUX
TRIBAL JAIL,

Respondents.

I. PRELIMINARY STATEMENT

1. This is an application for a writ of habeas corpus by Charles Chipps pursuant to 25 USCA 1303, Indian Civil Rights Act, seeking an order from this Honorable Court requiring respondents to release him from custody because his rights under 25 U.S.C.A. 1302 have been violated.

II. JURISDICTION

2. This Court has jurisdiction under 25 U.S.C. 1302 and 28 U.S.C. 1343 (3) and (4). Petitioner by this action seeks to test the legality of his custody by order of an Indian Tribe. Petitioner has exhausted his tribal remedies as shown by the attached April 16, 2010, decision of the Oglala Sioux Tribal Appellate Court.

III. PARTIES

3. Plaintiff, an enrolled member of the Oglala Sioux Tribe, is presently incarcerated in the Oglala Sioux Tribal Jail at Pine Ridge, South Dakota. He resides

otherwise near Wanblee, South Dakota, within the exterior boundaries of the Pine Ridge Indian Reservation.

4. Defendant Oglala Sioux Tribal Court is the judicial arm of the Oglala Sioux Tribe, a federally recognized Indian Tribe, and a subordinate tribal entity. It exercises judicial powers pursuant to delegation from the Oglala Sioux Tribe. Petitioner is being held on a warrant issued by the Oglala Sioux Tribal Court.

5. Defendant Oglala Sioux Tribe Public Safety Commission is the law enforcement arm of the Oglala Sioux Tribe and a subordinate tribal entity. It exercises law enforcement functions pursuant to delegation from the Oglala Sioux Tribe, including the operation of the Tribal Jail where petitioner is presently incarcerated.

6. Defendant, Darwin Long, is an employee of the Oglala Sioux Tribe Department of Public Safety and the Administrator of the Oglala Sioux Tribal Jail where petitioner is presently incarcerated.

IV. FACTUAL ALLEGATIONS

7. Defendant was arrested on July 1, 2009, on four counts of sexual assault in violation of Section 234 of the Oglala Sioux Tribal Code and four counts of child abuse under 63 (A)-(B) of the Tribal code.

8. Defendant was denied bond on August 12, 2009.

9. No determination was ever made as to whether there was probable cause to charge or hold defendant for any charges as required by 25 U.S.C. 1302 (2).

10. A trial date was scheduled for September 8, 2009, but was continued at the request of the prosecution or court and not at the request of the defendant.

11. Since his arrest defendant has been in custody.

12. Petitioner is being held at the request of the United States, which upon information and belief, is conducting an on going investigation of the same charges that petitioner is currently being held for in the Oglala Sioux Tribal Court.

13. The Oglala Sioux Tribe filed a motion in the Oglala Sioux Tribal Court seeking an order holding the prosecution in abeyance until the United States had completed its investigations.

14. The Oglala Sioux Tribal Court has no investigators. The investigators on the Pine Ridge Indian Reservation are federal agents.

15. The United States has possession of the evidence in the present case that is required to proceed against petitioner in the Oglala Sioux Tribal Court which, according to the Tribe, makes it impossible for the Tribe to prosecute petitioner on the Tribal charges.

16. Petitioner's right to a speedy trial has been deliberately delayed to give the federal government time to complete its investigation.

17. The Oglala Sioux Tribe is working and cooperating with the United States to give the federal government an advantage by holding petitioner without bond.

18. Each of the counts carries a maximum offense of 6 months in jail.

19. No action had been taken to do anything to set this matter for trial from the time of petitioner's arrest until the Oglala Sioux Tribal Supreme Court held on April 16, 2010, that the Tribe had until June 30, 2010, to conduct petitioner's trial, the Tribe being content to simply let Chipps languish in jail. A copy of the Supreme Court opinion is set forth at attached exhibit 1.

20. Continued incarceration under the present circumstances is dangerous to the health and well being of Charles Chipps. See December 31, 2009, letter from Dr. Rory Sumners and January 14, 2010, letter from physician's assistant, Rick Stoltenburg, that "in light of his current medical condition, Mr. Chipps' overall health and welfare would be best served by any situation that might allow him to be released from incarceration for medical reasons," and "his incarceration is not in his medical best interests." See attached exhibits 2 and 3.

21. All of the offenses for which petitioner stands charged carry a maximum sentence of six months in jail. The offenses were charged at one time. Petitioner has been incarcerated on the charges longer than the maximum sentence on any one charge. Even if he were to be convicted of all charges, he would already have served the maximum sentence on each charge. Such a situation violates 25 U.S.C. 1302 (7) and its proscription against cruel and unusual punishments.

22. Under Section 5-7 (a) of the Oglala Sioux Tribal Code and the Constitution of the Oglala Sioux Tribe, petitioner is entitled to a speedy and public trial. Federal law also requires a speedy public trial. 25 U.S.C. 1302 (6).

23. There is no justification or excuse for the delay in the trial of this case until June 30, 2010. Petitioner has already been deprived of a speedy trial both by the United States and the Oglala Sioux Tribe. Further incarceration under the facts of this case amounts to intentional conduct to deprive petitioner of his rights under tribal and federal law, including 25 U.S.C. 1302 (2), (6), (7), and (8).

24. Petitioner bring this action to represent a class of persons who have been charged with offenses in the Oglala Sioux Tribal Court, but as part of a pattern and practice and regular routine are denied speedy trials.

WHEREFORE, petitioner Charles Chipps prays that this Honorable Court set this matter down for a prompt hearing and make inquiry into the facts and circumstances of his case; that an order be entered discharging petitioner from custody on the grounds that his right to a probable cause determination, speedy trial, and other rights fundamental to a fair trial have been violated; and that this action be certified as a class action on behalf of all other persons charged in the Oglala Sioux Tribal Court who have been denied a speedy trial.

Dated this 27th day of April, 2010.

X Charles Chipps SR
Charles Chipps
Petitioner

STATE OF SOUTH DAKOTA)
) S.S.
COUNTY OF SHANNON)

On this, the 27th day of April, 2010, before me, the undersigned officer, personally appeared Charles Chipps, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Signature]
Notary Public - South Dakota

My Commission Expires: 10-1-15

