

The Burger Court Opinion Writing Database

DeCoteau v. District County Court for Tenth Judicial District

420 U.S. 425 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 12, 1975

Re: (73-1148 - DeCoteau v. District County Court for 10 Jud. Dist.
(73-1500 - Erickson v. Feather)

Dear Potter:

I join in your proposed opinion dated
February 5, 1975.

Regards,

W. B.

Mr. Justice Stewart

Copies to the Conference

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NATIONAL MANUSCRIPT DIVISION

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To (3) The Chief Justice ✓
Mr. Justice Brennan ✓
Mr. Justice Stewart ✓
Mr. Justice White ✓
Mr. Justice Marshall ✓
Mr. Justice Blackmun ✓
Mr. Justice Powell ✓
Mr. Justice Rehnquist ✓

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas; J.

Circulate: 2/6/75

Nos. 73-1148 AND 73-1500

Recirculate: _____

Cheryl Spider DeCoteau, Nat-
ural Mother and Next Friend
of Robert Lee Feather and
Herbert John Spider,
etc., Petitioner,

73-1148 v.

The District County Court for
the Tenth Judicial District.

On Writ of Certiorari to
the Supreme Court of
South Dakota.

Don R. Erickson, Warden,
Petitioner,

73-1500 v.

John Lee Feather et al.

On Writ of Certiorari to
the United States
Court of Appeals for
the Eighth Circuit.

[January —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

In my view South Dakota has no jurisdiction over either the civil suit in the first of these two cases nor in the criminal prosecutions involved in the second. The so-called jurisdictional acts took place in "Indian Country" over which the federal regime has exclusive jurisdiction until and unless the United States relinquishes it, and that has not been done here. Here, as in *United States v. Mazurie*, — U.S. — (1975), the acts were done within "Indian country" as defined in 18 U. S. C. § 1151, for they occurred on land "within the limits of" an Indian reservation "notwithstanding the issuance of any patent...."

Petitioner DeCoteau is an enrolled member of the Sisseton-Wahpeton Sioux Tribe against whom South Dakota brought dependency and neglect proceedings in the state courts, seeking to terminate her parental author-

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U.S. SUPREME COURT

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 6, 1975

RE: Nos. 73-1148 and No. 73-1500 - DeColeau v. The District
County Court for the Tenth Judicial District and Don R.
Erickson v. John Lee Feather, et al.

Dear Bill:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

✓

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J. FEB 5 1975

Circulated: _____

Nos. 73-1148 AND 73-1500

Recirculated: _____

Cheryl Spider DeCoteau, Natural Mother and Next Friend of Robert Lee Feather and Herbert John Spider, etc., Petitioner,

73-1148 v.

The District County Court for the Tenth Judicial District.

On Writ of Certiorari to the Supreme Court of South Dakota.

Don R. Erickson, Warden, Petitioner,

73-1500 v.

John Lee Feather et al.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

These two cases, consolidated for decision, raise the single question whether the Lake Traverse Indian Reservation in South Dakota, created by an 1867 treaty between the United States and the Sisseton and Wahpeton bands of Sioux Indians, was terminated, and returned to the public domain, by the Act of March 3, 1891, c. 543, 26 Stat. 1035. In each of the two cases, the South Dakota courts asserted jurisdiction over members of the Sisseton-Wahpeton Tribe for acts done on lands which, though within the 1867 Reservation borders, have been owned and settled by non-Indians since the 1891 Act. The parties agree that the state courts did not have jurisdiction if these lands are "Indian country," as defined

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U.S. DEPARTMENT OF JUSTICE

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 10, 1975

Re: Nos. 73-1148 & 73-1500 - DeCoteau v. District
County Court

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

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U.S. DEPARTMENT OF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

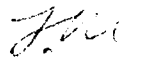
February 27, 1975

Re: Nos. 73-1148 and 73-1500 -- Cheryl Spider DeCoteau v.
The District County Court for the Tenth Judicial
District; Don R. Erickson v. John Lee Feather et al.

Dear Bill:

Please join me in your dissent.

Sincerely,



T. M.

Mr. Justice Douglas

cc: The Conference

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THE MANUSCRIPT DIVISION

RECEIVED BY ADVISORY

February 11, 1975

Re: No. 73-1148 - DeCoteau v. District County Court
No. 73-1500 - Erickson v. Feather

Dear Potter:

I feel that your proposed opinion for these cases is a most constructive one. If Indians are ever to lose a case, these, it seems to me, are the ones they will lose.

Near the top of page 5 is a reference to the "Northern District of South Dakota." I haven't been in my Circuit for a few months, but, the last I knew, the entire State is a District. See 28 U. S. C. § 122. Perhaps the confusion is due to the fact that there is a Northern Division of the District, but then that would be of small significance.

I wonder also about the page reference to Mattz at the end of the paragraph on page 21.

Sincerely,

HAB

Mr. Justice Stewart

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

February 10, 1975

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

No. 73-1148 DeCoteau v. District
County Court
No. 73-1500 Erickson v. Feather

Dear Potter:

Although I voted the other way (relying primarily on Mattz) your opinion - especially the full exposition of the history - persuades me to your view.

Accordingly, please join me in your opinion for the Court.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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U.S. DEPARTMENT OF COMMERCE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

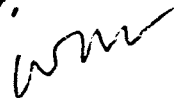
February 10, 1975

Re: Nos. 73-1148 and 73-1500 - DeCoteau v. District
County Court, et al.

Dear Potter:

Please join me in your opinion for the Court in these
cases.

Sincerely,



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U.S. SUPREME COURT