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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

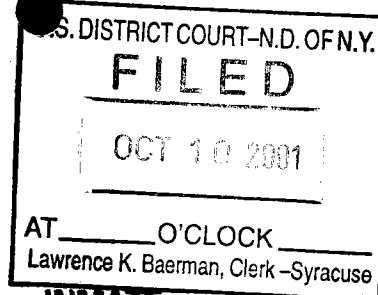
DAVID DONHAUSER,

Plaintiff(s)

vs.

GLENN S. GOORD, COMMISSIONER,
NEW YORK DOCS, MARTHA YOURTH, CSW,
DOMINIC MARTINELLI, SOP, COUNSELOR
NY DOCS.

Defendant(s)



**INMATE
CIVIL
RIGHTS
COMPLAINT
PURSUANT TO
42 U.S.C. § 1983**

Civil Case No.:

Plaintiff(s) in the above-captioned action, allege(s) as follows:

JURISDICTION

01-CV-1533

1. This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) and 2201.

PARTIES

2. **Plaintiff:** David Donhauser, Inmate #99 B 1868
Address: Oneida Correctional Facility
6100 School Road, P.O. Box 4580
Rome, New York 13442-4580

Additional Plaintiffs may be added on a separate sheet of paper.

3. a. **Defendant:** Glenn S. Goord
Official Position: Commissioner, NY DOCS
Address: New York Department of Correctional Services
State Campus, 1220 Washington Ave
Albany, New York 12226

b. Defendant: Martha E. Yourth
Official Position: CSW, Guidance Specialist

Address: NYS Dept. of Correctional Services
State Campus, 1220 Washington Ave
Albany, New York 12226

c. Defendant: Dominic Martinelli
Official Position: Sex Offender Program Counselor

Address: Oneida Correctional Facility
6100 School Road
Rome, New York 13440

Additional Defendants may be added on a separate sheet of paper.

4. **PLACE OF PRESENT CONFINEMENT**

a. Is there a prisoner grievance procedure at this facility?

☒ Yes () No

b. If your answer to 4(a) is YES, did you present the facts relating to your complaint in this grievance program?

() Yes ☒ No

If your answer to 4(b) is YES:

(i) What steps did you take?

I wrote letters to all officials of
the Sex Offender Programs.

(ii) What was the **final** result of your grievance?

They refused to address my concerns
about my innocence and that I may be
committing perjury.

If your answer to 4(b) is NO:

Why did you choose to not present the facts relating to your complaint in the prison's grievance program?

This is not the procedure for this
kind of problem.

- c. If there is no grievance procedure in your institution, did you complain to prison authorities about the facts alleged in your complaint?

☒ Yes () No

If your answer to 4(c) is YES:

- (i) What steps did you take?

Talked with my assigned counselor, and
wrote letters to all parties of DOCS.

- (ii) What was the final result regarding your complaint?

They stated that I must participate in
the Sex Offender Program.

If your answer to 4(c) is NO:

Why did you choose to not complain about the facts relating to your complaint in such prison?

5.

PREVIOUS LAWSUITS

- a. Have you ever filed any other lawsuits in any state and federal court relating to your imprisonment?

() Yes ☒ No

- b. If your answer to 5(a) is YES you must describe any and all lawsuits, currently pending or closed, in the space provided on the next page.

For **EACH** such lawsuit, provide the following information:

i. **Parties to previous lawsuit:**

Plaintiffs:

N/A

Defendants:

N/A

ii. **Court (if federal court, name District; if state court, name County:**

N/A

iii. **Docket number:** _____

iv. **Name of Judge to whom case was assigned:**

N/A

v. **Disposition (dismissed? on appeal? still pending?)**

N/A

vi. **Approximate date of filing prior lawsuit:**

N/A

vii. **Approximate date of disposition:**

N/A

6.

FACTS

Set forth the facts of your case which substantiate your claim of violation of your civil and/or Constitutional rights. List the events in the order they happened, naming defendants involved, dates and places.

Note: You must include allegations of wrongful conduct as to EACH and EVERY defendant in your complaint. (You may use additional sheets as necessary.)

In October 2000, and November 2000, and in March 2001, Plaintiff,
had conversations with his counselor O'Keefe, and CSW Yourth,
and SOP Counselor Martineeli and Counsel Annucci, about the Sex
offender program, in which he was told he has to participate in or
lose his good time and other problems he would receive. He stated he
could not participate in this program because he felt that having to
write out a full report of sexual history and tell about the instant
offense was in violation of his fifth amendemnt rights and also
violates his right to privacy.

Form E (2) (a) . 4

See attached statment of facts.

7.

CAUSES OF ACTION

Note: You must clearly state each cause of action you assert in this lawsuit.

FIRST CAUSE OF ACTION

Refusal to admit responsibility and disclose his sexual history and refusal to disclose in writing a full report of uncharged sexual offenses and of the instant offense(s) is sought by Prison officials SOP programs. This sought information could incriminate plaintiff and subject him to further criminal charges, refusal to admit his crime will subject him to loss of good time.

SECOND CAUSE OF ACTION

Refusal to talk about your sexual history and present crime with other inmates in the sex offenders program and sharing this kind of information with peer (inmate) counselors will have the plaintiff removed from the program and given disciplinary charges as well as loss of good time and higher classification under Megan's Law. This violates his Right to Privacy and self Incrim.

THIRD CAUSE OF ACTION

My refusal to participate and admit responsibility will result in consequences such as loss of earned good time and having my Parole consideration denied, along with having my sex offender status classified at a higher level under Megan's Law. Also, other loss of privileges as organizations and programs, and transfers to other facilities with Better trade programs.

8. Plaintiff(s) demand(s) a trial by
Jury -or- Court
(Circle only one).

9. PRAYER FOR RELIEF

WHEREFORE, plaintiff(s) request(s) that this Court grant the following relief:

See attached "Prayer for Relief".

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Sept. 12, 2001



Signature of Plaintiff(s)
(all Plaintiffs must sign)

David Donhauser
99 B 1868
Oneida Correctional Facility
P. O. Box 4580
Rome, New York 13442-4580

WHEREFORE, the Plaintiff requests that this Honorable Court grant the following relief:

1. A Declaratory Injunctive Order requiring the current Sex Offender Program operated by the New York State Department of Corrections, at various correctional facilities, CEASE and DESIST the current standard operating procedure of mandating a graphic and detailed written disclosure of a participants Instant Offense, and their sexual autobiography. This is a violation of his Fifth Amendment privilege of self-incrimination, and in that there being no confidentiality afforded the disclosures, the information required further denies him of his Fourth Amendment privilege of privacy.

ALTERNATIVE REQUEST OF DAMAGE DEMANDED:

1. Require that Corrections Counselors assigned to the Sex Offender Program, have specialized training in counseling sex offenders

2. Require that a certified psychologist supervise the Sex Offender Program.

3 The Instant Offense is reviewed on an individual basis and the resultant programmatic needs afforded that individual.

4. All Sex Offender Programs throughout the state operate in the same manner, and be recognized as one.

AWARD:

COMPENSATORY DAMAGES in the following amount:
ONE MILLION dollars for the loss of parole possibilities, the loss of "good time", and BUT not limited to any other "penalogical" consequences.

AWARD: (continued)

PUNITIVE DAMAGES in the following amount:

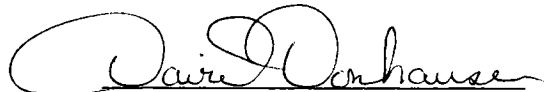
\$500,000.00 for the higher risk level determination associated with the failure to participate, or not being able to participate in the Sex Offender Program.

For the loss of personal freedom that is attached to the Level 3 risk level, relative to reporting procedures, location of housing and information dissemination.

GRANT such other relief as it may appear that the Plaintiff is warranted.

I Declare under penalty of perjury that the foregoing is true and correct.

DATED: Sept. 17, 2001



David Donhauser
Inmate #99 B 1868
Oneida Correctional Facility
P.O. Box 4580
6100 School Road
Rome, New York 13442-4580

STATEMENT OF FACTS

1.) I, David Donhauser, plaintiff is bring this complaint against the New York State Department of Correctional Services and in particular the Sex Offenders Programs, aka SOP.

2.) Prior to makin this request of the Court, the plaintiff has had correspondence with his assigned corrections counselor, Mr. O'Keefe, and Senior corrections counselor at Oneida Correctional facility Mrs. Carter, Guidance Specialist at Department of Correctional Services Central Office Ms. M. Yourth, and Deputy Commissioner/Counsel Anythony Annucci, in an attempt to resolve the issues of making written statments of instant sex offense and his sexual history in the Sex Offenders Programs.

3.) This action pursuant to 42 USC §1983, is a result of the Sex Offenders Programs requiring plaintiff who have been convicted by special plea "Alford" and/or a jury trial, albeit maintaining their innocence and currently have an appeal within the Courts, and/or an inmate who has taken an "Alford" plea bargain (Plaintiff) plea bargain, to sign a "contract" prior to placement within the SOP that states among several issues, that you will write a complete and detailed letter of the instant offense.

4.) Plaintiff, now having filed this action after having tried to resolve the issues of entering the program without having to make this written letter of the instant offense and prior sexual history, states the following reasons for bringing this Action into

the United States District Court of the Northern District of New York.

5.) Plaintiff has refused program participation at this present time because of having to make a written statment of the instant offense and prior sexual history. Plaintiff contends that his reasoning for this is he is innocent and having to make a written letter would be "Perjury". Also plaintiff contends that making this written report violates his Rights protected under the Fifth Amendment of the United States Constitution. However, Defendant's have informed plaintiff by way of writen confirmation that he "Must" follow program guidelines or lose his "Goodtime" and he could receive an "incident report" (misbehavior report) which he could end up in Special Housing Unit, lost of His goodtime "all of it", and have his Public Notification level increased because of his failure to follow program rules in the SOP. Several other punitive actions can be done to plaintiff for not following SOP guidelines. He can be transferred to another facility, and/or have his security classification increased to maximum security, be denied Parole at his Parole Release hearing which is scheduled for January 2002.

6.) The SOP program Counselor makes recommendation to the NYS Board of Sex Offenders Evaluation for assigned Levels under the Megan's Law. This Board is operated by the New York State Department of Correctional Services. Plaintiff having failed to participate and follow guidelines will have his "Public Notification" increased to the highest level by Counselor Martinelli. Plaintiff now faces having his Public notification increased from level one or two, to the highest level (3), because he refuses to violate his Rights afforded and protected under the Fifth Amendment.

7.) In the United States Court of Appeals, Tenth Circuit, decided on May 14, 2001, in the matter of Robert G. Lile vs. (Plaintiff) vs. David McKune, Defendant, Kansas Department of Corrections (SOP), in the Matter under Title 42 USC §1983 action, regarding the same matters to which plaintiff commences this complaint against the New York State Department of Correctional Services, and it's "Sex Offenders Programs".

8.) New York State DOCS have consistently violated plaintiff Fourth Amendment Rights to "Privacy" and his Fifth Amendment Rights against "Self-incrimination" by requiring plaintiff to disclosure of his sexual history, this program sought information that could incriminate him and subject him to further criminal charges; consequences for plaintiff refusal to disclosure of his instant offense and prior sexual history was substantial to implicate his Right against self-incrimination and also forces plaintiff to admitting incriminating information as part of the SOP program or suffering the penalties for not writing the statement for the SOP programs.

9.) While it is recognized that to be successful within a treatment or "rehab" program, one must first admit there is a problem, and accept responsibility for it. Herein lies the problem for plaintiff is required to participate in the sex offenders program (SOP), albeit, maintaining his innocence prior to, during, and post trial.

10.) It is a requirement that prior to entering the residential (SOP), that a contract be signed, and within that contract it states: "In order to meet SOP goals and obtain a satisfactory discharge, I--must--demonstrate acceptance of responsibility for

my sexual offending behavior, and participate in all programs prescribed activities". Within the first two weeks a participant must submit a mandatory written disclosure of their instant offense.

11.) That mandatory written disclosure MUST Include plaintiff feelings, thoughts, and behavior prior to and during the instant offense, along with the victim(s), their age(s), sex, and their relationship to plaintiff and how plaintiff coerced them. Also plaintiff must include how he was apprehended, and how he is responsible for this crime. After this is completed, the plaintiff MUST submit a life and sexual autobiography.

12.) This "autobiography" must include the typical pedigree information, along with your inter-personal relationships with your "family" and "friends", if anyone in your family has had or having alcohol or drug problems, if anyone within your "family" has had interaction with the authorities, how you learned about "sex", your "sexual" "HISTORY" which must include all UNCHARGED sexual acts, your "DEVIANT" sexual arousal, and/or any history of sexual abuse.

13.) The above stated information may be pertinent for "rehab" purposes, and effectual in treating someone in the SOP. However, submission of this information also allows for self-incrimination as this disclosure is an admittance of guilt, and that there is NO "Confidentiality" afforded such disclosure, regarding any uncharged sex offenses (whether against minors, or persons of legal age), these offenses must be reported to the proper authorities for further prosecution.

14.) The mandatory written disclosure vis-a-vis admittance of guilt and responsibility is or may be acceptable to an inmate who has taken a "plea" for a reduction in incarceration time, but any admittance of any guilt obviates the collateral legal attacks available to one who has maintained their innocence throughout or taken an "Alford" plea.

15.) This self-incrimination written disclosure statement must be viewed as the nature of the statement and/or the admission within that statement. It is pertinent to note that one who has maintained their innocence, and testified at trial to their innocence, and submits a written disclosure must portend the further charges of perjury.

16.) There are significant adverse consequences associated with the failure "or" refusal to FULLY participate in the SOP. The consequences are (but not limited to) Misbehavior Report, Unsatisfactory discharge from the SOP (which will result in an unwarranted assignment of community risk level 3), denial of the Earned (goodtime) Eligibility Certificate, possibility of Special Housing (SHU) status, relocation to another Prison (maximum), and or loss of good time and denial of parole opportunities. These consequences for plaintiff who did not have participation mandated by the Courts (via sentence or Court ordered) are analogous to the conditions imposed for serious disciplinary infractions, and therefore, one is compelled to participate.

17.) The SOP while stated as being voluntary in nature is not. The deprivation penalties, along with administrative consequences that are imposed if one refuses to volunteer or FULLY participate,

lends one to view this as being compelled to participate, which is clearly a violation of the Fifth Amendment privilege, which allows individuals not to answer official questions put to them in any proceeding whether criminal or civil, formal or informal, in that the answers may incriminate the person in future criminal proceedings.

18.) Therefore, the adverse consequences imposed upon plaintiff by the NYS - DOCS, unless the plaintiff relinquishes his Constitutional Rights of self-incrimination are sufficiently effective, and substantial enough to constitute impermissible compulsion of self-incrimination, which the Fifth Amendment prohibits.

19.) Inmate (plaintiff) records are afforded confidentiality to prevent unauthorized individuals access to the inmates (plaintiff) instant offense, and any prior criminal history, as a prevention method of protecting the plaintiff from any unwarranted retribution.

20.) Currently the SOP allows (as required in the signed contract) that information relative to assessment and program process (ie; sexual history, instant offense statement, sexual autobiography, ect.) will be shared with other SOP within a correctional setting, the Board of Sex Offense Examiners, the NYS Division of Parole, and any community treatment program.

21.) The sharing of information relative to the "rehab" of plaintiff is both understandable, and acceptable. However, the Plaintiff alleges that the current corrections counselor assigned to the Sex Offender Program at Oneida Correctional Facility, shares this information relative to individuals within the SOP with "facilitators" (Inmate who assist and or guide the "programming" needs of other inmates within the SOP when the Corrections Counselor cannot fill that need),

which puts all inmates within the SOP at the risk of "reprisals", in that the "confidentiality" afforded this program becomes sufficiently diminished.

22.) Plaintiff also alleges that the Corrections Counselor Mr. Martinelli, shares any and all information with the Courts when assignment of risk level is forthcoming. This information is submitted by Mr. Martinelli to the Courts with the intention of swaying the Court for a higher risk level determination. This "sharing" is "Prohibited" by law, and can only be offered to the Court via a subpoena or Court Order. [See 42 C.F.R. §§2.63 (a) (2) & 2.65, and New York Penal Law, and N.Y. Corrections Law §168 (m)], any information offered to the Court MUST be submitted by the Board of Sex Offenders Examiners.

23.) In addition to the Corrections Counselor "sharing" personal information with the facilitators, the Courts, the Plaintiff also alleges that Mr. Martinelli, shares it with the Corrections Officers at Oneida Correctional Facility, which in of itself is a violation of the inmates rights, and Corrections Law §29.

24.) Plaintiff alleges that his 14th Amendment Priviledges of a Liberty Interest is voided by the NYS DOCS Sex Offenders Programs requirement of signing a contract stating that one must accept "responsibility" and fully participate in the SOP with regards to plaintiff current instant sexual offense and history, and if he is not able or willing to, due to collateral reviews of his instant offense, or have taken an "Alford" plea bargain he will suffer Administrative consequences and/or deprivation of priviledges.

25.) While Plaintiff is cognizant that as an incarcerated individual, he does not enjoy the Liberty Interest afforded by the

Constitution and the 14 th Amendment. However, incarcerated individuals do have a limited interest in that they can expect Parole, conditional release, use of the telephone, use of commissary, outside (yard) priviledges and program priviledges.


26.) Some or all (but not limited to) of the above may be withheld or revoked for failure to accept responsibility and/or fully participate in the Sex Offenders Program. Also one may be relocated to another facility, put into (SHU) Special Housing Unit, long term keep lock status for failue to accept responsibility or fully participate in the New York State Department of Correctional Services, Sex Offenders Program.

27.) All of the aforementioned consequences and deprivations while assocoaited with disciplinary issues, and not relative to the individuals 5th Fifth Amendment Rights Priviledges against self-incrimination, are and do impose a hardship upon Plaintiff and also denies him his limited Liberty Interests.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares states under the penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. §1746. 18 U.S.C. §1621.

Executed at Oneida Correctional Facility, on September 17, 2001.



David Donhauser
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Oneida Coorectional Facility
6100 School Road, Box 4580
Rome, New York 13442-4580