

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DONHAUSER / 99B-1868

Plaintiff,

-against-

GLENN S. GOORD, Commissioner, N.Y.
DOCS

MARTHA E. YOURTH, CSW Guidance Spec.,

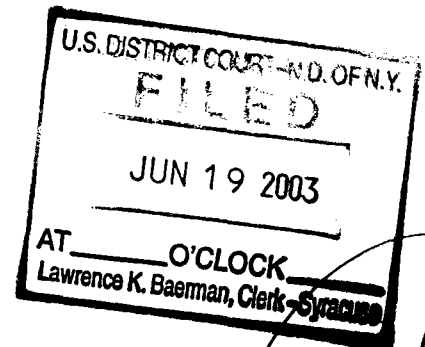
DOMINIC MARTINELLI, Sex Offenders
Program Counselor

SUE CARTER, S.C.C. Oneida Correctional
Facility

Defendants,

X

X



NOTICE OF MOTION FOR
PRELIMINARY AND/OR
PERMANENT INJUNCTION
RELIEF [F.R.C.P. 65]

CASE NO.: 9:01-CV-1535
(DNH) (GLS)

SIRS:

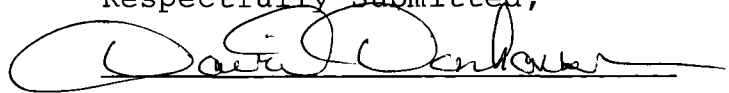
PLEASE TAKE NOTICE, that upon the annexed affidavit of
DAVID DONHAUSER, sworn to or affirmed on this 21st day of
May, 2003, and upon the complaint herein, plaintiff will
move this Court, Gary L. Sharpe, U.S.M.J., in room _____,
United States Courthouse, 100 South Clinton Street, Syracuse, New
York 13261-7367, on the 30th day of June, 2003, at
the forenoon or as soon thereafter as motion can be heard, for an

order pursuant to Rule 65 (a) of the Federal Rules of Civil Procedures, granting injunctive relief to plaintiff.

DATED: May 21 , 2003

Marcy, New York

Respectfully Submitted,



David Donhauser / 99B-1868

Plaintiff Pro-se

Mid-State Correctional Facility


P.O. Box 2500

Marcy, New York 13403

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under 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 Mid-State Correctional Facility, on May 21, 2003.



David Donhauser / 99B-1868

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

X

DAVID DONHAUSER / 99-B-1868

Plaintiff,

-against-

AFFIDAVIT

CASE NO.: 9:01-CV-1535

GLENN S. GOORD, Commissioner, N.Y. DOCS

(DNH) (GLS)

MARTHA E. YOURTH, CSW Guidance Spec.,

DOMINIC MARTINELLI, Sex Offenders

Program Counselor,

SUE CARTER, S.C.C. Oneida Correctional
Facility

Defendants.

X

STATE OF NEW YORK)

) ss.:

COUNTY OF ONEIDA)

DAVID DONHAUSER, declares under penalties of perjury that the foregoing is true and correct to the best of my knowledge and belief.

1). I am the above named Plaintiff in the entitled action, and I am an inmate in the Department of Correctional Services at Mid-State Correctional Facility.

2). I make this Affidavit in Support of a Motion for a Preliminary and/or Permanent Injunction Relief.

3). On April 19, 2002, Plaintiff filed the Second Amended Complaint with the Court.

4). On July 23, 2002, Plaintiff filed a Motion for Preliminary and/or Permanent Injunctive Relief, which was decided on October 2, 2002, by Justice Hurd, at which time was denied.

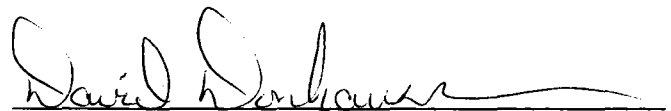
5). On December 1, 2002, Plaintiff was refused his 2 years of good time credits. Plaintiff was to be conditionally released March 10, 2003 (See Memorandum of Law Exhibit-B, dated May 21, 2003).

6). On January 22, 2003, Justice Sharpe filed a report and recommendation to dismiss Plaintiff's complaint, in which Plaintiff filed a motion on February 26, 2003, objecting to the report and recommendation.

7). For reasons set forth in Plaintiff's Memorandum of Law, Plaintiff submits that the instant motion should be granted.

Dated: Marcy, New York.

June 8, 2003



David Donhauser / 99-B-1868

Plaintiff Pro Se

Mid-State Correctional Facility

P.O. Box 2500

Marcy, New York, 13403

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

X

DAVID DONHAUSER / 99B-1868

Plaintiff,

- against -

CASE NO.: 9;01-CV-1535
(DNH) (GLS)

GLENN S. GOORD, Commissioner, N.Y.
DOCS

MARTHA E. YOURTH, CSW Guidance Spec.,

DOMINIC MARTINALLI, Sex Offenders
Program Counselor

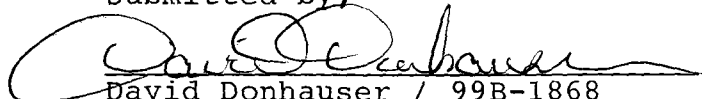
SUE CARTER, S.C.C. Oneida Correctional
Facility

Defendants,

X

MEMORANDUM OF LAW

Submitted by,



David Donhauser / 99B-1868
Mid-State Correctional Facility
P.O. Box 2500
Marcy, New York 13403

DATED: May 21, 2002

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STATEMENT OF THE CASE

This is a civil rights case filed under 42 U.S. 1983 by a State prisoner **DAVID DONHAUSER / 99B-1868**, asserting that the Sex Offenders Program in the New York State Department of Correctional Services are in violation of the Fifth Amendment guarantee against self-incrimination, the Fourteenth Amendment guarantee of Due Process, and equal protection, and the First Amendment guarantee of the right to privacy. The plaintiff also claims punitive action by the defendants in that appropriated GOOD TIME for non-participation in the Sex Offenders Program.

The plaintiff requests that the above referenced individual be granted injunction relief as a individual who has been convicted of a sex related crime and who has suffered irreparable harm from the defendants in the form of inappropriate, unwarranted and/or injurious sanctions.

STATEMENT OF FACTS

The plaintiff was charged with a sex related crime, but for convenience purposes he chose an "ALFORD" plea and never admitted guilt to the aforementioned crime. However, as per the state wide policy of the New York State Department of Correctional Services, an inmate who has been convicted of a sex related crime is required to participate in the Sex Offenders Program. The Department of Corrections also has a blanket policy that requires an inmate that refuses to participate in a voluntary Program,

(one being the Sex Offenders Program) negative consequences in the form of appropriating GOOD TIME credits from an individual who refuses to participate in the Sex Offenders Program for constitutional issues and/or other reason.

The Department of Corrections has appropriated good time from the plaintiff in the form of two years. Plaintiff has faced the distinct possibility of irreparable harm and/or loss, which was imminent under D.O.C.S.'s blanket policy, and has occurred prior to a decision being made on the merits of this case.

ARGUMENT

Plaintiff seeks protection in the form of temporary and/or permanent injunctive relief, in that the defendants have sought inappropriate, unwarranted, arbitrary and/or injurious sanctions against the plaintiff.

Pursuant to Federal Rules on Civil Procedures, Rule 65 (2) (b) (1), the plaintiff seeks this relief in that he will and/or has suffered irreparable injury and/or loss. He is cognizant that as movant, he has the burden to justify the issuance of the injunction.

In MARKOVITS v. VENTURE INFO CAPITAL INC. 129 F.Supp2d 647, 655 [S.D.N.Y. 2001] the Court held the legal standards to justify the issuance of a preliminary injunction, a movant has the burden of proving two factors: 1). the demonstration that if not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered. (see JAYARAY v. SCAPPINI 66 F3d 36 , 39 [2nd Circuit 1995] citing CITIBANK

NORTH AMERICA v. CITYTRUST 756 F2d 273, 275 [2nd Circuit 1985]), and 2). the movant must show either: a). a likelihood of success on the merits, or, b). sufficiently serious question going to the merits to make them fair grounds for litigation.

The ase of the irreparable harm requirement may be met by showing that the harm is unquantable in monetary terms, and that the specter of harm must not be " remote or spaculative, but actual and imminent. " (see TOM DOHERTY ASSOC. INC. v. SABAN ENTERTAINMENT 60 F3d 27, 37 [2nd Circuit 1995]). The harm which one would incur includes, but is not limited to, disclosure of any unreported sex crime, the prospect of new prosecutions for previously undisclosed crimes, possible perjury prosecutions for those that maintained they were innocent at trial and/or plead to an ALFORD PLEA, (see exhibit - A) and withholding " GOOD TIME CREDITS " , for the inability to participate in the Sex Offenders Program (SOP) due to the probability of perjury prosecution associated with the requirement that one admit to the culpability of the crime. However, the deprivation of liberty (GOOD TIME), for nonparticipation in the Sex Offenders Program, by the Department of Corrections, remains one of the most unquantable factors relative to this request for relief. Further, the plaintiff contends that there is a direct and automatic causal connection between nonparticipation in the Sex Offenders Program, and failure to gain discretionary release, (GOOD TIME). (see exhibit - B) This further supports the plaintiffs contention that the injunction relief requested is sufficient to merit grounds for litigation.

In McKUNE v. LILE 536 U.S. 24, 122 S.Ct. 2017 [2002], the

Supreme Court made reference to the fact that the respondents decision not to participate in the Kansas SATP did not extend his incarceration or affect his eligibility for good time or parole. In quoting Justice Anthony M. Kennedy "... noting that an inmate's refusal to participate does not affect eligibility for good time or parole... " (see McKune @ S.Ct. 2020 (2)). "... Determining what constitutes compulsion involves a question of judgement. Courts must decide whether the consequence of an inmate's choice to remain silent are closer to the physical torture against which the Constitution clearly protects, or the de minimis harm against which it does not... " Plaintiff acknowledges that he was charged with a sex related crime, and in fact took an ALFORD plea, (see NORTH CAROLINA v. ALFORD 400 U.S. 25, 91 S.Ct. 160 [1970]) but this does not make the plea a loop hole for further admittance of the crime charged. The plea charged was in full satisfation in not receiving more time in the instant offense for having past criminal history, and not in admittance to the crime in its untold circumstance. But to participate in the optional/ voluntary Sex Offenders Program within the Department of Corrections, one must admit guilt, write a statement of the crime, disclose family history, and past uncharged sex crimes. Here plaintiff has not admitted this to the sentencing Court, where the Court did not recommand/ or mandate plaintiff to participate in a optional/ voluntary Sex Offenders Progarm. (see exhibit - C) The frame of which comes from SANDIN v. CONNOR 515 U.S. 472, 115 S.Ct. 2293 [1995]. In SANDIN id., @ 479 n. 2, 115 S.Ct. @ 2297 n. 2, the Court made references to WOLFF v. McDONNELL 418 U.S. 539, 94 S.Ct. 2963 [1974],

which stated: " ... The Due Process analysis begins with WOLFF ... " " ... There, Nebraska inmates challenged the decision of prison officials to revoke good time credits without adequate procedures ... " (418 U.S., @ 553 , 94 S.Ct., @2973). Like Nebraska inmates, inmates in the New York State prisons earn good time credits under a state statute (7 New York Code Rules and Regulations - part 260 & 261) that bestowes mandatory sentence reductions for good behavior, efficient, and willing performance of duties assigned, progress and achievement in a assigned treatment program, revocable only for flagrant and serious misconduct and/or refusal to participate in assigned programs. "... Due Process Clause itself does not create a liberty interest in credit for good behavior, but that the statutory provision created a liberty interest in a " shorted prison sentence " ... " (SANDIN @ 2297). New York State has little procedural due process with regards to the Time Allowance Committee, and revoking inmates good time credits. The hearing is not taped and/or recorded, and there is no appeal process. (see exhibit - D) Also, in RUSSELL v. COUGHLIN 910 F2d 75 @ 77 (A) (2nd Circuit 1990), the court made references "... to create a Constitutionally protected liberty interest, a state regulation must employ " language of an unmistakably mandatory character, requiring that certain procedures ' may ' , ' shall ' , ' will ' , or ' must ' be employed " ... " (see exhibit - E). This consequence for remaining silent and loss of good time shows compulsion regarding self-incrimination and thus, is a violation of the Fifth Amendment.

In a desenting opinion by Justice Day O'Connor, "... she concluded that because the inmate, Robert G. Lile, faced only

" minor " consequences from his refusal to participate in the treatment program, no self-incrimination existed ... " By emphasizing the facts of the McKune case, Justice Day O'Connor left open the prospect that more onerous consequences (loss of good time) in another State prison system might tip the balance of compelled self-incrimination. This is representative of the issues in this instant case. A major consequence of not participating in the New York State Sex Offenders Program is loss of good time (see exhibit - B). These case settle that goverment and/or State prisons cannot penalize assertion of the Constitutional privilege against compelled self-incrimination by imposing sanction to compel testimony which has not been immunized. But the touchstone of the Fifth Amendment is compulsion, and direct economic sanction and a longer sentence of imprisonment are not only penalties of forcing the self-incrimination which the Amendment forbids. Here plaintiff asserts that this condition the Department of Correctional Services has promulgated amount to " unseen parameters " as to who gets denied good time without due process by the Time Allowance Committee, which in turn makes it fair grounds for litigation.

In a decision by Court of Appeals, NEAL v. SHIMODA 131 F3d 818 (9th Circuit 1997), and also in regards to an analysis by Judge T.G. Nelson, "... extented discussion of the liberty interest implicated by statute... " "... a liberty interest that entitled him to benefits of appropriate procedures... " in VITEK v. JONES, 445 U.S. 480, 100 S.Ct. 1254 [1980]. "... for classifications and labeling ; in which this Circuit Court has made its order and decision, the Court stated: Hawaii's statute

creating the SOTP authorizes correctional officials to classify certain inmate's as sex offenders without a hearing and mandates their completion of an extensive treatment program, which includes their confession to past sex offenses, as a pre-condition to parole eligibility ... " (Neal @ 828)

Under New York State Law regarding " GOOD TIME ALLOWANCES ", an inmate can earn credit for participating (Participation) in vocational, treatment programs, and good behavior, (see 7 New York Code Rules and Regulations 260 & 261). There is no penalty to withhold good time based on refusal for voluntary programs, since there are other programs for rehabilitative needs, and withholding good time allowance is based on " poor performance and/or disciplinary infraction, " in which the record reflects a behavior for disciplinary purposes. Seeking a redress for change in policy of an institution(s) through judicial remedies is clearly a protected right under Corrections Law § 138(4) and U.S.C.A. Constitutional Amendment Artical 1, First Amendment and to make open statements that are protected under the equal protection clause, Constitutional Amendment fourteen, when asserting due diligence not to be punished for refusing to participate in a voluntary program calls for "Liberty Interest Protected by Due Process. "

The Court also held that "... under the technical provision of the SOTP, the treatment program available to Neal and Martinez is voluntary, and the inmates can quit at any time. However, because the State's regulations render the inmate completely ineligible for parole if the treatment program is not satisfactorily completed, the attachment of the " Sex Offender " label to the targeted inmate has a practical and inevitable

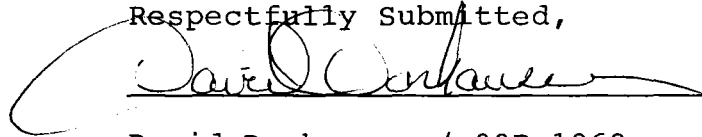
coercive effect on the inmate's conduct ... " (see Neal @ 829) New York State Department of Correctional Services has the same type of regulations, that are part of a blanket policy that gives an inmate negative consequences for refusing to participate in an optional/voluntary program. These consequences are not limited to taking an inmate's GOOD TIME, or eligibility for parole. (see exhibit - B) An optional/voluntary program (see exhibit - F) cannot be used as a punitive tool to coerce, compel, and threaten plaintiff to participate within the Sex Offenders Program, without appropriate Due Process. The Department of Correctional Services uses the threat of loss of Good Time, which in turn lengthens the plaintiffs sentence for refusing to participate in an optional/ voluntary program. In the McKune case, the Supreme Court made reference to the fact that if Lile would have lost good time and/or received a lengthened sentence, then there would be a Constitutional Violation. (see McKune @ S.Ct. 2020) Plaintiff has an expectation to be released on his conditional release date, when he has participated in all assigned and/or Court mandated programs, without the threat of loss of good time for refusing to participate in a optional/voluntary program. This in turn violates plaintiff's First, Fifth and Fourteenth Amendments Due Process rights, which makes if fair grounds for litigation.

CONCLUSION

WHEREFORE, plaintiff believes that he has shown irreparable harm and for the above stated reasons, the plaintiff respectfully requests this Court to grant the relief as requested, mandate

defendants to reinstate good time taken from Plaintiff in December 2002, that upon inmate's refusal to participate in New York State Sex Offenders Program, the practice of withholding good time allowance be ceased. The practice of forcing an inmate to admit to the crime, by an admission of guilt as a requirement enabling participation be halted, especially where the inmate has taken an Alford Plea; has an appeal pending; never convicted and sentenced for a sex related crime; or any other litigation pending. That the policy of the Department of Corrections requiring participation in the program due to mention of the crime in a pre-sentence report or being charged with the crime but not found guilty or convicted of the crime. Plaintiff requests that this be granted until the Court makes their decision on the merits of the complaint. Finally, plaintiff respectfully asks for any other such relief deemed just and proper by the Court.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "David Donhauser", is written over a horizontal line.

David Donhauser / 99B-1868

Plaintiff Pro-Se

DATED: May 21, 2003

Exhibit

A

Offenders and other treatment providers along the criminal justice continuum.

- That participants who disclose specific information regarding other sex crimes committed or anticipated will be reported to the appropriate authorities, so that victims will have closure and further victimization will be prevented.

Purpose of Policy and Procedure

The purpose of this Policy and Procedure is to ensure minimum standards of operation for NYSDOCS's Sex Offender Counseling Program. A variety of functions are served and have been established to:

- Provide concise, ethical standards to insure professionalism among those individuals working with the Sex Offender Counseling Program and thereby increase professional performance.
- Provide DOCS statewide consistency in its Sex Offender Counseling Program.
- Provide transferred offenders consistency between programs.
- Maintain efficiency and clarity in operation.
- Decrease the potential for legal suits by providing a framework within which DOCS can operate in a legally responsible fashion.

Program Goals

There are three main goals of the Sex Offender Counseling Program for offender participants. The sex offender is expected to:

1. Demonstrate acceptance of responsibility for his/her sexual offending behavior,
2. Develop and demonstrate an understanding of his/her cycle of sexual offending behavior,
3. Develop appropriate relapse prevention and intervention strategies.

ONEIDA CORRECTIONAL FACILITY
LAW LIBRARY

CORRECTIONAL FACILITY
SEX OFFENDER COUNSELING PROGRAM

WAIVER
OF
PARTIAL CONFIDENTIALITY

ONEIDA CORRECTIONAL FACILITY
LAW LIBRARY

I, _____, DIN # _____, understand that as a part of my Sex Offender Counseling Program and progress, it is necessary to share my progress and participation with others who will be supervising me on Parole or continuing to treat me in the community when I am released. This includes sharing any/all homework assignments, program evaluations, discharge summaries and other related materials of the Sex Offender Counseling Program. I understand that by signing this Waiver of Partial Confidentiality, I am granting permission to the Sex Offender Counseling Program staff to release these materials to the NYS Division of Parole, who will supervise my release, The Board of Examiners of Sex Offenders, who will evaluate my risk level, and any community organization or individual who engages me in sex offender treatment when I am released from NYSDOCS.

I also understand that any crime of detail I disclose, whether a crime I have previously committed and not been prosecuted for, or a crime that I am planning to commit, will be reported to the appropriate law enforcement agencies.

The Sex Offender Counseling Program Policy and the Waiver of Partial Confidentiality that I am signing has been explained to me to my satisfaction by the Sex Offender Counseling Program staff. I understand the policy and give my consent to waive partial confidentiality as set forth above.

Inmate's Signature

Counselor's Signature

Date

CC: Inmate Guidance File
Parole File Central Office File

SOP 3

Exhibit

B

FACILITY ONEIDA CONSIDERATION DATE 11/2002 INIT

INMATE DONHAUSER, DAVID DIN 9981868

CR DATE 03/10/2003 ME DATE 03/10/2005

TOTAL GOOD TIME AVAILABLE..... 002-00-00

TIME TENTATIVELY LOST IN TIER III HEARINGS..... 00-00-000

TIME TENTATIVELY LOST IN TIER III HEARINGS
PRIOR TO COMPUTERIZATION.....

TIME TENTATIVELY LOST AT OCFS(OFFICE CHILD/FAM SVCS).....

TOTAL TENTATIVELY LOST GOOD TIME.....

RESTORATION OF TENTATIVELY LOST GOOD TIME.....

REASONS

LOST GOOD TIME - TAC HEARING(IF APPLICABLE)
(DIRECTIVE 4932 SEC. 261.4)..... 02-00-00

TOTAL GOOD TIME WITHHELD(IF APPLICABLE)..... 02-00-00

ALLOWANCE RECOMMENDED(LINE 4 MINUS LINE 8)..... 00-00-00

REASONS Refusal of ART and SOP. May reapply after successful
completion of programs.

RECONSIDERATION DATE, IF ESTABLISHED.....

P. Haughwout

SIGNATURE OF CHAIRMAN

DD

TITLE

11/25/02
DATE

1. SUPERINTENDENT'S ACTION

CONFIRM RECOMMENDATION ☒ OTHER DETERMINATION _____ SPECIFY _____

[Signature]

SUPERINTENDENT

11.25.02
DATE

COMMISSIONER'S DECISION

[Signature]

AFFIRMED

MODIFIED

DATE

12/1/02

COMMENTS

NOTICE TO INMATE: PURSUANT TO 7 NYCRR, CHAPTER V, PART 262 ALL TIME ALLOW-
ANCE DECISIONS ARE REVIEWED AUTOMATICALLY BY THE COMMISSIONER OR HIS DESIG-
NEE. THE DECISION OF THE COMMISSIONER OR HIS DESIGNEE IS FINAL. YOU MAY
REQUEST RECONSIDERATION OF ANY DECISION TO WITHHOLD GOOD TIME BY WRITING
TO THE FACILITY TIME ALLOWANCE COMMITTEE CHAIRMAN.
DISTRIBUTION: CENTRAL OFFICE, GUIDANCE UNIT, INMATE, PAROLE OFFICE, FAC FILE

NAME: DONHAUSER, DAVID
DIN: 93B1868
NYSID: 05692654J

FACILITY: ONEIDA
Interview Date: 01/23/2002
Interview Type: INITIAL

Earned Eligibility Certificate: DENIED
Supervision Fee: ELIGIBLE
Certificate of Relief from Disability: INELIGIBLE

Parole Decision:

DENIED - HOLD FOR 24 MONTHS, NEXT APPEARANCE DATE: 01/2004

Conditions of Release/Staff Instructions/Reasons for Denial:

PAROLE IS DENIED. YOU ARE PRESENTLY SERVING TERMS FOR 2 COUNTS BURGLARY 3RD DEGREE AND 1 COUNT RAPE 3RD DEGREE. THE BURGLARY RELATES TO STEALING PROPERTY AT 2 SEPARATE CAR WASHES. THE RAPE REFERS TO ILLEGAL SEXUAL INTERCOURSE WITH A 16 YEAR OLD GIRL. YOUR PRIOR RECORD EXTENDS BACK TO 1987 WITH A YO ADJUDICATION BASED UPON PETIT LARCENY AND INCLUDES 1 PRIOR CONVICTION FOR BURGLARY 2ND DEGREE, 6 MISDEMEANORS AND A PAROLE VIOLATION. THIS HAS BEEN A CONSTANT PATTERN OF LARCENY, CRIME AND RESISTANCE TO AUTHORITY. WE ALSO NOTE THAT YOU HAVE NOT YET BEEN ABLE TO BENEFIT FROM A SEX OFFENDER TREATMENT PROGRAM OR ART. THESE FACTORS DEMONSTRATE THAT YOU PRESENT A SERIOUS THREAT TO COMMUNITY SAFETY AND WELFARE AND DELIE DISCRETIONARY RELEASE.

IF CR:

I WILL SEEK, OBTAIN, AND MAINTAIN EMPLOYMENT AND/OR AN ACADEMIC/ VOCATIONAL PROGRAM.

I WILL SUBMIT TO SUBSTANCE ABUSE TESTING AS DIRECTED BY THE P.O.

I WILL PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM AS

DIRECTED BY THE P.O.

I WILL NOT OPERATE ANY MOTOR VEHICLE, APPLY FOR, RENEW, OR POSSESS (continued)

* * * * *

I N M A T E C O P Y

* * * * *

Edh,d,t AS

Exhibit C

SENTENCE & COMMITMENT

NEW YORK
E) (COUNTY) COURT COUNTY OF Queens

99B1868

HON. Russell F. Buccafurri
PRESIDING

Jeanette Butler
COURT REPORTER

THE PEOPLE OF THE STATE OF NEW YORK

-VS-

Indictment Number 98-2124-001

Indicted for: 140.20 155.30-1
145.00-1, 140.3

David Donkuser
M 11.4.68 58826545
SEX DATE OF BIRTH NYSID NUMBER

Date crime committed: 10.1.98

To be held until the judgment of this Court is satisfied.

THE ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED OF A (FELONY) (MISD) BY (PLEA) (JURY) (TRIAL) FOR THE CRIME(S) OF:
(Conviction) (Sentence)

Crime	# of Counts	Law	Section	Minimum Term (yrs)	Maximum Term (yrs)	Definite/Determinate Terms
1. <u>Burglary 3°</u>	<u>1</u>	<u>PL</u>	<u>140.20.00</u>	<u>3</u>	<u>6</u>	
2. _____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____	_____

Convicted as a Juvenile Offender _____ Age at time crime committed _____

CONVICTION INCLUDES:

Convicted as an armed felon.

Weapon Type _____

The sentence(s) imposed herein shall run:

Drug Type _____

Concurrently with: _____

Consecutively to: _____

Found to be a YOUTHFUL OFFENDER.

☒ As a (second) (persistent) (violent) felony offender.

☒ A mandatory surcharge in the amount of \$ 150 and has (has not) been paid.

☒ A crime victims assistance fee in the amount of \$ 5 and has (has not) been paid.

A fine of \$ _____ dollars.

the Correctional Facility

AND THAT THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE

☒ Department of Correctional Services of the State of New York until released in accordance with the law, and being a (male) (female) person sixteen or older (the County Sheriff) (NYS Department of Correctional Services) is directed to deliver (him) (her) to the custody of the NYS Department of Correctional Services as provided in 7 NYCRR Part 103. _____ Execute as a sentence of parole supervision (CPL 410.1)

Division for Youth of the State of New York in accordance with the law being a (male) (female) person less than sixteen (16) years of age at the time the crime was committed.

_____ County Jail (correctional facility).

REMARKS: _____

Amended commitment 6/25/99 Original sentence date 1/1
(DATE) (CLERK OF COURT)

BY Antonia M. Malinski Court Clerk
(SIGNATURE) (TITLE)

☒ Third Copy Forwarded to Board of Elections

AMENDED SENTENCE & COMMITMENT

STATE OF NEW YORK

~~SENATE~~ (COUNTY) COURT: COUNTY OF WYOMING

HON. MICHAEL F. GRIFFITH
PRESIDING

JAMES MARCHESE
COURT REPORTER

THE PEOPLE OF THE STATE OF NEW YORK
-VS-

Indictment Number 4262

DAVID A. DONHAUSER 99B1868

M 11/4/68 58826545
SEX DATE OF BIRTH NYSID NUMBER

Indicted for: BURGLARY 3° (2 COUNTS) - CRIMINAL
MISCHIEF 2° (1 COUNT) - RAPE 3° (4 COUNTS)
SODOMY 3° (4 COUNTS) - END WARFARE CHILD (1 COUNT)
PETIT LARCENY (2 COUNTS) & CRIMINAL MISCHIEF 4° (1 COUNT)

Date crime committed: 7/24/98 - 8/6/98 - 8/11/98 - 8/19/98
6/1/98 7/1/98

To be held until the judgment of this Court is satisfied.

THE ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED OF A (FELONY) (~~MURDER~~) BY (PLEA) (~~VERDICT~~) FOR THE CRIME(S) OF:
(Conviction) (Sentence)

Crime	# of Counts	Law	Section	Minimum Term (yrs)	Maximum Term (yrs)	Definite/Determinate Term
1. <u>BURGLARY 3°</u>	<u>1</u>	<u>PL</u>	<u>140.20</u>	<u>3</u>	<u>6</u>	
2. <u>RAPE 3°</u>	<u>1</u>	<u>PL</u>	<u>130.25(2)</u>	<u>2</u>	<u>4</u>	
3. _____						
4. _____						
5. _____						

Convicted as a Juvenile Offender _____

Age at time crime committed _____

CONVICTION INCLUDES:

Convicted as an armed felon. _____

Weapon Type _____

☒ The sentence(s) imposed herein shall run:

Drug Type _____

Concurrently with: EACH OTHER AND TO ANY PRESENT SENTENCE

Consecutively to: _____

Found to be a YOUTHFUL OFFENDER.

☒ As a (second) (~~persistent~~) (~~violent~~) felony offender.

☒ A mandatory surcharge in the amount of \$ 150.00 and ~~has~~ (has not) been paid.

☒ A crime victims assistance fee in the amount of \$ 5.00 and ~~has~~ (has not) been paid.

A fine of \$ _____ dollars.

AND THAT THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE

☒ Department of Correctional Services of the State of New York until released in accordance with the law, and being a (male) (~~female~~) person sixteen or older (the County Sheriff) (~~NYS Department of Correctional Services~~) is directed to deliver (him) (~~her~~) to the custody of the NYS Department of Correctional Services as provided in 7 NYCRR Part 103.

Execute as a sentence of parole supervision. (CPL 410.91)

Division for Youth of the State of New York in accordance with the law being a (male) (~~female~~) person less than sixteen (16) years of age at the time the crime was committed.

County Jail (correctional facility).

REMARKS: JAIL CREDITS PREVIOUSLY CERTIFIED BY CAPTAIN B. JAMES
AT 28 DAYS.

Amended commitment

☒ Original sentence date 8/10/99

9/22/99 NELSON L. GREEN
(DATE) (CLERK OF COURT)

BY

(SIGNATURE)

(TITLE)

Third Copy Forwarded to Board of Elections

CORRECTIONS COPY

Exhibit D

FACILITY ONEIDA CONSIDERATION DATE 11/2002 INIT

INMATE DONHAUSER, DAVID DIN 99B1848

CR DATE 03/10/2003 ME DATE 03/10/2005

TOTAL GOOD TIME AVAILABLE..... 002-00-00

TIME TENTATIVELY LOST IN TIER III HEARINGS..... 00-00-000

TIME TENTATIVELY LOST IN TIER III HEARINGS
PRIOR TO COMPUTERIZATION.....

TIME TENTATIVELY LOST AT OCFS(OFFICE CHILD/FAM SVCS).....

TOTAL TENTATIVELY LOST GOOD TIME.....

RESTORATION OF TENTATIVELY LOST GOOD TIME.....

REASONS

LOST GOOD TIME - TAC HEARING(IF APPLICABLE)
(DIRECTIVE 4932 SEC. 261.4).....

02-00-00

TOTAL GOOD TIME WITHHELD(IF APPLICABLE).....

02-00-00

ALLOWANCE RECOMMENDED(LINE 4 MINUS LINE 8).....

00-00-00

REASONS Refusal of ART and SOP. May reapply after successful
completion of programs.....

RECONSIDERATION DATE, IF ESTABLISHED.....

P. Naughton

DO

11/25/02

SIGNATURE OF CHAIRMAN

TITLE

DATE

1. SUPERINTENDENT'S ACTION

CONFIRM RECOMMENDATION ☒ OTHER DETERMINATION _____ SPECIFY _____

[Signature]

11.25.02

SUPERINTENDENT

DATE

COMMISSIONER'S DECISION

AFFIRMED *[Signature]* MODIFIED _____

DATE

12/1/02

COMMENTS

NOTICE TO INMATE: PURSUANT TO 7 NYCRR, CHAPTER V, PART 262 ALL TIME ALLOW-
ANCE DECISIONS ARE REVIEWED AUTOMATICALLY BY THE COMMISSIONER OR HIS DESIG-
NEE. THE DECISION OF THE COMMISSIONER OR HIS DESIGNEE IS FINAL. YOU MAY
REQUEST RECONSIDERATION OF ANY DECISION TO WITHHOLD GOOD TIME BY WRITING
TO THE FACILITY TIME ALLOWANCE COMMITTEE CHAIRMAN.

DISTRIBUTION: CENTRAL OFFICE, GUIDANCE UNIT, INMATE, PAROLE OFFICE, FAC FILE

Exhibit E

activities rather than rote memorization and verbalization of concepts.

A willingness to abide by all prohibitions and restrictions ordered by the Court and/or recommended by the sex offender counseling staff.

By the end of Phase I of the Sex Offender Counseling Program, offenders should show substantial efforts toward achieving the qualities outlined above. If an offender cannot demonstrate the above, he/she is to be terminated from the program as unsatisfactory. While an offender may reapply for admission to the Program within a given time period, to be determined by sex offender counseling staff and not to exceed six months, the offender must demonstrate to counseling staff that attitudes, denial and behavior patterns counter-productive to the counseling process have changed.

ONEIDA CORRECTIONAL FACILITY
LAW LIBRARY

Program Refusal

An offender may choose to refuse participation in the Sex Offender Counseling Program. If the offender refuses to be available for the intake and assessment interview, or refuses to complete and sign all forms during the interview, or refuses to participate at any time before the Program begins, the Refusal Form should be completed. An offender who refuses the Program should be made aware of the negative impact his/her decision may have on the Earned Eligibility process, NYS Board of Parole decisions, Time Allowance Committee decisions, the Board of Examiners of Sex Offenders assessment, and other DOCS programs he/she may wish to participate in, such as the Family Reunion Program. The refusal of an offender to participate in the Sex Offender Counseling Program shall be noted clearly in a chrono entry in the offender's Guidance Unit file.

An offender who refuses the Sex Offender Counseling Program may be given one second and final opportunity to participate, after one year from his/her initial refusal but not within one year of his/her Conditional Release Date or thereafter, unless specified by a Time Allowance Committee that may withhold the earning of "good time" until the offender successfully completes the Sex Offender Counseling Program. In those instances where "good time" is withheld and the offender now wishes to participate, the offender will be referred to a Sex Offender Counseling Program but will not be given any priority status for admission and will be placed in the Program at the discretion of the sex offender counseling staff, when there may be a group opening not needed by another offender who has been awaiting placement in the Program and who has not previously refused the Program. It is the offender's responsibility to contact his/her assigned Corrections Counselor to ask for a second opportunity to participate. Until the offender makes this contact, he/she will continue to be considered as a refusal.

Oneida

CORRECTIONAL FACILITY

SOP REFUSAL

David Denbaker DIN 99B-1868

am refusing to participate in the Sex Offender Program.

I understand that this decision may result in any of the following:

- Recommendation by the Time Allowance Committee to withhold Good Time.
- Negative recommendation to the Parole Board.
- Denial of Earned Eligibility Certificate.
- No further opportunity to participate in a sex offender counseling program at other facilities.

David Denbaker
Inmate's Signature

3-7-2000
Date

Comments / Reason(s) for Refusal I'm sentence under an Alford plea.
I understand that we are sent to admit something we
didn't do. I'm in the courts against that reason.

M. M. M. M. M.
Counselor's Signature

3/7/2000
Date

cc: Guidance folder (original)
Parole
SOP File

24.03

D

ONEIDA ASSESSMENT UNIT

NAME _____ DIN _____

PAROLE BOARD _____

INSTANT OFFENSE _____

RECOMMENDED FOR SEX OFFENDER COUNSELING? YES _____ NO _____

INMATE WILLING TO PARTICIPATE? YES _____ NO _____

REASON FOR REFUSING PROGRAM: _____

I understand that my refusal to participate in the Mandatory Sex Offender Program
may result in any of the following options:

- Issuance of a Misbehavior Report
- Recommendation by the Time Allowance Committee to withhold Good Time
- Notification to the Parole Board
- Denial of an Earned Eligibility Certificate
- No future opportunity to participate in a Sex Offender Counseling Program at other facilities

Inmate Signature_____
Staff Signature_____
Date

/cjr

Original: Guidance File
cc: MSOP Counselor
Parole

Exhibit F

ONEIDA CORRECTIONAL FACILITY

Operations Manual
Policy and Procedures

Date Page of OCF
01/01/88 1 2 14.03A
Reviewed 08/03/00

Related ACA Standards: 3-4395

Chapter: INMATE RIGHTS

Subject: Operational Programming

Department Directive(s):

Approved: _____, Superintendent
Date: August 10, 2000

- I. AUTHORITY: Superintendent.
- II. PURPOSE: To describe the policies, which allow each inmate to choose from the variety of available programs.
- III. APPLICABILITY: To all inmates, to all employees who are involved in the planning, management, or operation of inmate program activity and especially to employees assigned to the departments listed in Section V-A of this document.
- IV. DEFINITIONS: None.
- V. POLICY:
 - A. All inmates are provided the option of refusing to participate in all programming except a work program, Adult Basic Education, Pre-GED Education and programs required by statute or court order. The optional programs available in this institution include the following activities or services:
 1. Vocational Training (Chapter 20)
 2. Religious Services (Chapter 23)
 3. Social Services and Counseling (Chapter 24)
 4. Psychological Services (Chapter 24)
 5. Psychiatric Treatment (Chapter 13)
 6. Library Services (Chapter 21)
 7. Athletic and Recreational Activity (Chapter 22)
 8. Involvement with Community Groups (Chapter 26)
 9. Educational Program Above the Eighth Grade Level (Chapter 20)
 10. Mail and Visiting Services (Chapter 16)
 11. Contacts with the News Media (Chapter 14)
 12. Contact with attorneys or legal representatives (Chapter 14)
 13. Volunteer programs (Chapter 26)
 14. Inmate classification (Chapter 18)
 15. Sexual Offender's Program (Chapter 24)

ONEIDA CORRECTIONAL FACILITY
LAW LIBRARY

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF ONEIDA) SS.:

I DAVID DONHAUSER/99B-1868, being duly sworn, deposes and says:

That I am the Plaintiff, in the within proceeding, and that I am over eighteen (18) years of age; reside at Midstate Correctional Facility, PO Box 2500, Marcy, New York 13403, and in the County of Oneida. That on the 21st day of May 2003, and on the 8th day of June, 2003
I served a true copy of the attached:

Notice of Motion, Affidavit, and Memorandum of Law in Support of Plaintiff's
Motion for Preliminary and/or Permanent injunction Relief

upon the concerned party/parties at the following addresses mentioned below, by placing said copies in a post-paid properly addressed wrapper in a official depository under the care and custody of the United States Postal Service within the State of New York.

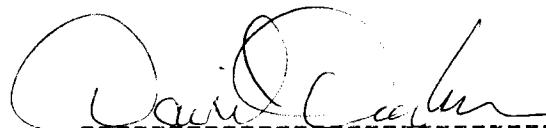
DATED: June 17, 2003

TO:

Nelson R. Sheingold
Asst. Attny. General (Defendant's Attorney)
The Capitol
Albany , New York 12224

Sworn to before me this

17 day of June 2003
Charles L. Youmans
NOTARY PUBLIC STATE OF NEW YORK


Signature

CHARLES L. YOUNANS
Notary Public, State of New York
No. 01Y05033506/
Qualified in Oneida County
Commission Expires 9/14/06