

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DONHAUSER,

Plaintiff,

vs

01-CV-1535

GLENN S. GOORD, Commissioner of the New
York State Department of Correctional Services;
MARTHA E. YOURTH, CSW Guidance Specialist;
DOMINIC MARTINELLI, Sex Offender Program
Counselor; and S. CARTER, S.C.C., Oneida
Correctional Facility,

Defendants.

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

FEB 15 2005

AT _____ O'CLOCK _____ M
LAWRENCE K. BAERMAN, Clerk
UTICA

APPEARANCES:

OF COUNSEL:

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Plaintiff, Pro Se
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NELSON R. SHEINGOLD, ESQ.
Assistant Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff David Donhauser ("Donhauser") moved for class certification. Defendants opposed. The motion was taken on submission without oral argument.

The prerequisites to a class action are: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). In addition, one of three alternatives must be established. First, a class action is maintainable if separate actions by the class members would create a risk of inconsistent adjudications that would "establish incompatible standards of conduct for the" opposing party, or individual adjudications "would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests." Id. 23(b)(1). Alternatively, where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole," a class action may be maintained. Id. 23(b)(2).

Finally, a class action may be maintained where common questions of law or fact "predominate over any questions affecting only individual members, and [] a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Id. 23(b)(3). In making these determinations, pertinent matters to consider include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; [and] (D) the difficulties likely to be encountered in the management of a class action.

Id. A careful review of plaintiff's submissions as well as the submissions by numerous non-party prisoners establishes that this action meets the numerosity, commonality, typicality, and

adequate representation prerequisites of Rule 23(a). Moreover, this is clearly a case where final injunctive relief should not be limited to Donhauser, but rather extend across the class. See Fed. R. Civ. P. 23(b)(2).

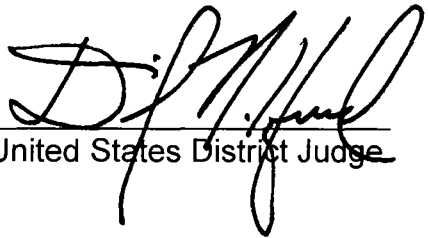
Contrary to defendants' assertion, a class can be defined that will not necessitate indefinite individual determinations of a fact-specific nature. Rather, the parameters of the class can be narrowly defined such that fact-finding is not necessary to a determination of the class membership.

Accordingly, it is

ORDERED that

1. Plaintiff's motion for class certification is GRANTED; and
2. The class is defined as follows: "Current or former New York State prisoners who have lost or been denied good time credits or have been threatened with the loss or denial of good time credits because of a refusal to admit guilt to criminal sexual conduct as part of the Sexual Offender Counseling Program."

IT IS SO ORDERED.


United States District Judge

Dated: February 15, 2005
Utica, New York.