

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DONHAUSER,
Plaintiff,

SECOND
AMENDED COMPLAINT

-against-

Case. No.: 9:01-CV-1535
(DNH) (GLS)

GLENN S. GOORD, Commissioner, NY DOCS,
MARTHA E. YOURTH, CSW Guidance Spec.,
DOMINIC MARTINELLI, Sex Offender Program
Counselor; and S. CARTER, S.C.C. Oneida
Correctional Facility,
Defendants.

JURY

13

TRIAL DEMANDED U.S. DISTRICT COURT - N.D. OF N.Y. FILED AT _____ O'CLOCK Lawrence K. Bauman, Clerk - Syracuse Donhauser, a State
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PRELIMINARY STATEMENT

This is a civil rights action filed by David Donhauser, a State prisoner, for damages and injunctive relief under 42 U.S.C. §1983, alleging that the sex offenders programs are in violation of his fifth Amendment right against self-incrimination as well as claims involving denial of due process, equal protection and right to privacy in violation of his fourth Amendment to the Constitution. The plaintiff also alleges the punitive actions of defendants taking good-time and other punitive actions such as new criminal charges.

JURISDICTION

1. The Court has jurisdiction over the plaintiffs' claims of violation of federal constitutional rights under 28 U.S.C. §1331, §1343, and §2201.

2. The Court has supplemental jurisdiction over the plaintiff's state law claims under 28 U.S.C. §1367.

PARTIES

3. The plaintiff, David Donhauser, was and is presently incarcerated at Oneida Correctional Facility during the events described in this complaint.

4. Defendant Glenn S. Goord is commissioner of NYS Department of Correctional Services. He is sued in his individual and official capacity.

5. Defendant Martha E. Yourth is a CSW Guidance Specialist in charge of Administrative decisions of the sex offenders programs. She is sued in her individual and official capacity.

6. Defendant Dominic Martinelli is the corrections counselor of the sex offenders program at Oneida Correctional Facility. He is sued in his individual and official capacity.

7. Defendant Sue Carter is a Senior corrections counselor of all programs and recommendations for individual recommended to the sex offender program. She is sued in her individual and official capacity.

8. All the defendants have acted, and continue to act, under color of state law at all times relevant to this complaint.

FACTS

9. On April 20, 2000, plaintiff was referred by his counselor to the sex offenders program at Oneida Correctional Facility. Plaintiff declined the program and stated that he is not guilty of any sex offense and did in fact plea under a special plea called Alford v.

10. On April 20, 2000, his counselor advised plaintiff in writing that his refusal will result in loss of good time. Again plaintiff delined and explained that his participation could and would result in new criminal charges because he would be forced to admit to uncharged acts of sexual abuse with the alleged victim.

11. On October 24, 2000, the plaintiff wrote a letter to SOP Counselor Dominic Martinelli. In his letter he explained that he only excepted to plead guilty to the charged sex offense because of his prior criminal history and that he would most likely be found guilty. He further stated that he did not committ any sexual offense.

12. On November 9, 2000, the plaintiff received a letter from Martha Yourth, CSW Guidance Specialist. She stated that his failure to participate in the sex offenders program will result in negative impact on his earning good time.

13. On February 14, 2001, the plaintiff wrote to Sue Carter, senior corrections counselor regarding the program. He stated that he would participate in the program if he could maintain his innocence during the program, and take his Fifth Amendment right to self-incrimination. Further plaintiff stated that he did not want to write out a personal history about his family. Plaintiff stated that my family in not in prison why should I give personal information about my family lives.

14. On March 20, 2001, plaintiff wrote a letter to Anthony Annucci, counsel for NYS DOCS, regarding having to participate in the sex offenders program. Attorney Annucci informed plaintiff that he must participate in the SOP or lose his good time and other privileges.

15. On January 23, 2002, Plaintiff appeared before the NYS Board of Parole and was denied parole because he refused the sex offenders program.

16. Plaintiff now awaits the decision of the time allowance committee that will find that he refused the sex offenders program and for that fact take his good time. He still awaits the decision of Martinelli as to issuing a Misbehavior Report.

17. Plaintiff asserts that the sex offenders program will cause him further incarceration because the programs counselor takes the written reports and history that the plaintiff provides in the program and turn that information over to the Police and District Attorney's for further criminal prosecutions.

18. The sex offenders program requires each participant to provide an entire written explanation regarding the victim and a complete sexual history. This information is compared with the present charges against plaintiff to determine if you admitted to other uncharged acts of rape, sexual abuse, sodomy, ect. This information is then given to the authoritys for further criminal charges.

DENIAL OF DUE PROCESS

19. The sex offenders programs do not offer a willing inmate an opportunity to participate in the program and maintain his Fifth Amendment rights to self-incrimination. Each case should be looked at on an individual bases to determine each sentence as to what the sentence was as to plea with admission of the crime, Alford plea or trial and convicted and pending appeal. This program does not offer an alternative choice to one willing to participate an exercise his rights to maintain his innocence.

CAUSE OF ACTION

20. The practices of the defendants violates the constitutional rights of the plaintiff against self-incrimination guaranteed by the Fifth Amendment by subjecting the plaintiff to compulsion through the requirements of submitting a complete sexual history and instant offense details in the clarification.

21. The practices of the defendants violates plaintiff right to privacy guaranteed by the First Amendment through the dissemination of information derived exclusively during participation in the mandatory segments of the SOP wherein information is utilized to the plaintiff detriment.

22. The defendants violate the rights of plaintiff equal protection of the laws guaranteed by the Fourteenth Amendment in that the plaintiff is subject to an automatic, blanket policy discrimination with respect to SOP participation and negative collateral consequences by participating and by refusing without regard to each case circumstances.

RELIEF REQUESTED

WHEREFORE, the plaintiff respectfully prays for an order and judgment against the defendants as follows:

A. CLASS CERTIFICATION: NONE

B. DECLARATORY RELIEF: The plaintiff prays that the court grant declaratory relief wherein the court declares:

1. The automatic requirement that New York State prisoners who were convicted of a sex-related offense pursuant to an Alford plea, convicted of sex related offense after a trial having entered a plea

of not guilty, or found guilty by an administrative prison disciplinary tribunal of an alleged sex related disciplinary infraction after having entered a plea of not guilty, participate in the SOP subjects the plaintiff to deprivation of state created liberty interest without due process and equal protection.

2. The requirement that the plaintiff admit guilt to the instant offense and provide a detailed sexual history and description of the instant offense violates the Fifth Amendment prohibitions against compulsory self-incrimination.

3. The requirements that the plaintiff provide detailed sexual history and instant offense information which is the freely disseminated by the defendants to the detriment of the plaintiff and class violates the First Amendment guarantees the right to Privacy where polices are not reasonably related to a compelling legitimate penological state interest.

4. The automatic blanket policy application of the requirement that the plaintiff be subject to participation in the SOP or suffer negative consequences as a result of non-participation, without an individual case determination, subjects the plaintiff to discriminatory treatment in violation of the Fourteenth Amendment.

5. The practices of discharging participates from the SOP without affording due process protections, based upon the automatic application of negative collateral consequences for refusing to participate or for being discharged violates the Fourteenth Amendment Due Process and Equal Protection of the plaintiff.

INJUNCTIVE RELIEF

The plaintiff prays that the Court grant preliminary and permanent injunctive relief wherein the defendants are:

A. Enjoined from taking any action(s) in retaliation or in retribution against plaintiff for having filed and commenced the instant action, or from taking any action in an attempt to, or which would serve to, render the instant action moot, including, but not limited to; transferring plaintiff to another facility; or harassing him through the use of unwarranted searches and frisks of his person or property, or through the use of the inmate disciplinary process; or withholding plaintiff's good time for failure to participate in the sex offenders program; or, any other actions of a similar nature aimed at, or with the intentions of punishing plaintiff for having commenced the instant action or at preventing litigation on the instant action from proceeding.

B. Enjoined from continuing the current practice of requiring a detailed written account of an SOP participant's personal sexual history, biography, and description of the instant offense, where said participant is a recognized member of the class.

C. Enjoined from disseminating any information currently in existence which has been obtained from any document or information derived exclusively through SOP participation to inmate program facilitators, to corrections officers, to the Board of sex offender Examiners, to any District Attorney or other prosecutor, to any Court for any purpose other than the instant action, or to any person, agency or entity not specifically identified herein.

D. Enjoined from utilizing any information obtained through participation in the SOP for any reason other than rehabilitative treatment, including, but not limited to, seeking an increased risk level determination; seeking criminal prosecution for uncharged or criminal actions of any member of the class or participant of the SOP which have come to light through said participation, seeking to withhold good time credits based upon said information, seeking to prevent release on parole, conditional release or maximum expiration date based upon in use of said information; or, of any other used information which is intended to negatively affect or impact any member of the class or any participant of the SOP in his reputation, ability to function in and out of society as a normal participant, eligibility to participate in or obtain programs, services, privileges, ect.

E. From taking any other actions against the plaintiff which the Court deems to be inappropriate, unwarranted, arbitrary, injurious, until such time as a final disposition on the merits in this action has been reached.

DAMAGE RELIEF

The plaintiff prays that the Court grant damage relief to plaintiff as follows:

1. Compensatory damages against all named defendants, individually and collectively, in the amount of one million, five hundred thousand dollars (\$1,500,000) to compensate plaintiff for the injuries caused through the violation of his rights and state-created liberty interest, defamations of character, and other similar injuries as a consequence thereof.

2. Punitive damages against all named defendants, individually and collectively, in the amount of five million dollars (\$5,000,000) to serve as a penalty for their actions and as a deterrent to others from taking actions of a similiar in the future.

COURT COSTS AND ATTORNEY FEES

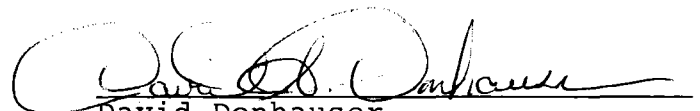
The plaintiff prays that the Court order the named defendants, individually and collectively, to award to plaintiff and plaintiff class, compensation for all court costs, fees, expenses and any attorney fees which might arise as a result of this action.

OTHER RELIEF

The plaintiff prays that the Court will grant such other and further relief as the Court deems to be just, proper, and appropriate.

EXECUTED THIS DATE: April 19, 2002.

Respectfully submitted,



David Donhauser
DIN # 99-B-1868
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6100 School Road
Post Office Box 4580
Rome, New York 13442-4580

