

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GERRARD J. BLAKE,

Plaintiff,

- vs -

9:09-CV-266

BRIAN FISCHER, Commissioner, GLENN GOORD, Former Commissioner, KENNETH S. PERLMAN, Deputy Commissioner for Program Services, JOHN H. NUTTALL, Former Deputy Commissioner for Program Services, and EDWIN H. ELFELDT, Coordinator for Sex Offender Counseling and Treatment Program, Each for New York State Department of Correctional Services; GEORGE B. ALEXANDER, Chairman of New York State Division of Parole; L. WEINGARTNER, Deputy Superintendent for Programs, and KATHLEEN ALTMAN, Correctional Counselor, Both of Five Points Correctional Facility; TOUSIGNANT, Parole Officer at Upstate Correctional Facility; KRATZENBERG, Parole Officer, SCROGGY, Correctional Counselor, and K. LaPOLT, Deputy Superintendent for Programs, Each at Great Meadows Correctional Facility; JOSEPH T. SMITH, Superintendent, NEVILLE ANDREWS, Deputy Superintendent for Programs, ED RUDDER, Sex Offender Program Psychologist, STACY BODE, Clinical Social Worker for Sex Offender Program, DICK FITCHETT, Former Senior Counselor for Sex Offender Program, B. McCULLOUGH, Senior Counselor for Sex Offender Program, FRANK CHIAPPERINO, Correctional Counselor for Sex Offender Program, JOHN TOWNLEY, Correctional Counselor for Sex Offender Program, and E. TRINIDAD, Former Correctional Counselor for Sex Offender Program Each at Shawangunk Correctional Facility, and Each Individually and In Their Official Capacities,

Defendants.

APPEARANCES:

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DAVID N. HURD
United States District Judge

OF COUNSEL:

MARK IRWIN REISMAN, ESQ.

JAMES J. SEAMAN, ESQ.
Assistant Attorney General

DECISION and ORDER

Plaintiff, Gerrard J. Blake, brought this civil rights action in December 2008, pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated March 5, 2010, the Honorable David R. Homer, United States Magistrate Judge, recommended that defendants' motion to dismiss (Docket No. 40) be granted as to: (1) the Eighth Amendment claim - and that claim should be dismissed in its entirety; (2) All Fourteenth Amendment due process claims except for the stigma-plus claim for injunctive relief; and (3) defendants Andrews, Goord, and Fischer in all respects - and those three defendants should be dismissed from the action in all respects. Further, the Magistrate Judge recommended that defendants' motion to dismiss be denied as to: (1) the First Amendment retaliation claim; (2) the Fourteenth Amendment stigma-plus due process claim for injunctive relief; and (3) the Fourteenth Amendment equal protection claim. The defendants have filed timely objections to the Report-Recommendation.

Based upon a de novo review of the entire file, including the portions of the Report-Recommendation to which plaintiff has objected, and the recommendations of Magistrate

Judge Homer, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1). The defendants not personally involved in the remaining claims shall be dismissed from the action.

Accordingly, it is

ORDERED that

1. Defendants' motion to dismiss (Docket No. 40) is GRANTED as follows:

- (a) The eighth Amendment claim is DISMISSED in its entirety;
- (b) All Fourteenth Amendment due process claims except for the stigma-plus claim for injunctive relief are DISMISSED; and
- (c) The complaint against defendants Neville Andrews, Glenn Goord, Kenneth S. Perlman, John H. Nuttall, George B. Alexander, Kratzenberg, Scroggy, K. LaPolt, Joseph T. Smith, Ed Rudder, Stacy Bode, Dick Fitchett, B. McCullough, Frank Chiapperino, John Townley, E. Trinidad and Brian Fischer is DISMISSED;

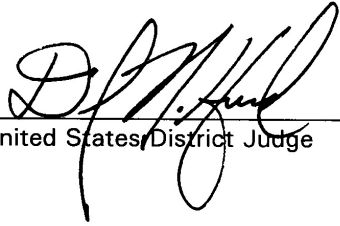
2. Defendants' motion to dismiss against defendant Edwin H. Elfeldt, Coordinator for Sex Offender Counseling and Treatment Program, L. Weingartner, Deputy Superintendent for Programs, and Kathleen Altman, Correctional Counselor, is DENIED as to:

- (a) The First Amendment retaliation claim;
- (b) The Fourteenth Amendment stigma-plus due process claim for injunctive relief; and
- (c) The Fourteenth Amendment equal protection claim.

3. The file is to be returned to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: June 15, 2010
Utica, New York.



United States District Judge