475 Mass. 745
Supreme Judicial Court of Massachusetts,
Suffolk.
Robert CANTELL & others[1]
v.
COMMISSIONER OF CORRECTION & others.[2]
SJC–12015.
|
Submitted March 10, 2016.
|
Decided Oct. 21, 2016.

Synopsis
Background: Inmates who had been held in segregated confinement brought action against Commissioner and other officials of Department of Correction, alleging under various theories that they were detained in violation of their due process rights. The Superior Court Department, Suffolk County, Elizabeth M. Fahey, J., 2013 WL 9925512, dismissed action. Inmates appealed. The Appeals Court, 87 Mass.App.Ct. 629, 33 N.E.3d 1255, held that appeal was moot and dismissed. Inmates appealed.

Holdings: The Supreme Judicial Court, Botsford, J., held that:

appeal was not moot, and

inmates were entitled to pursue in Superior Court their motion to certify a class, and, on the merits, their claims that they were denied due process.

Reversed.

Procedural Posture(s): On Appeal; Motion to Dismiss.

Attorneys and Law Firms

****1149** Bonita Tenneriello for the plaintiffs.

Sheryl F. Grant for the defendants.

The following submitted briefs for amici curiae:

Amy Fettig & Jamelia N. Morgan, of the District of Columbia, Phillip Kassell, Matthew R. Segal, & Jessie J. Rossman for American Civil Liberties Union & others.

Ruth A. Bourquin, Deborah Harris, Boston, Margaret E. Monsell, Boston, & Jamie A. Sabino for Massachusetts Law Reform Institute & others.

****1150** Adam Sanders, pro se.
Present: GANTS, C.J., SPINA, CORDY, BOTSFORD, DUFFLY, LENK, & HINES, JJ.[3]

Opinion

BOTSFORD, J.

***746** The named plaintiffs in this putative class action are inmates serving criminal sentences in various Massachusetts prison facilities. For varying lengths of time, each of them has been placed in a "special management unit" (SMU) in nondisciplinary administrative segregation. In January, 2012, the plaintiffs commenced this action against the Commissioner of Correction (commissioner) and the superintendents of the correctional institutions in which the plaintiffs were housed (collectively, defendants). The plaintiffs allege that their placements in the SMUs, essentially in conditions of solitary confinement, violate their State and Federal constitutional rights to due process as well as regulations of the Department of Correction (department), and they seek to represent a class of similarly situated prisoners confined in SMUs. In early 2013, following the release of this court's decision in *LaChance v. Commissioner of Correction,* 463 Mass. 767, 978 N.E.2d 1199 (2012) (*LaChance I*), a judge in the Superior Court denied the plaintiffs' motion for class certification and allowed the defendants' motion to dismiss the plaintiffs' amended complaint.

The plaintiffs appealed to the Appeals Court.[4] A divided panel of that court dismissed the appeal as moot because by then it was undisputed that no named plaintiffs remained in SMUs. *Cantell v. Commissioner of Correction,* 87 Mass.App.Ct. 629, 33 N.E.3d 1255 (2015). The dissenting justice concluded that in light of the class action allegations in the plaintiffs' amended complaint, even if the named plaintiffs were no longer confined in SMUs, the case was not ***747** moot, and the court had a duty to decide the plaintiffs' appeal on its merits. *Id.* at 635–639, 33 N.E.3d 1255 (Rubin, J.,

dissenting). We allowed the plaintiffs' application for further appellate review. We agree with the dissenting justice of the Appeals Court that the appeal is not moot, and we also agree that *LaChance I* does not resolve the merits of all the plaintiffs' claims. We reverse the Superior Court's judgment of dismissal and remand the case to that court for further proceedings consistent with this opinion.[5]

Background. The plaintiffs' amended complaint alleges, in summary, the following. The plaintiffs are representatives of "a class composed of all prisoners held in non-disciplinary segregation in an SMU," and the class is so numerous that joinder of all is impracticable. See Mass. R. Civ. P. 23(a), 365 Mass. 767 (1974).[6] Each of ****1151** the named plaintiffs has been held in nondisciplinary administrative segregation in an SMU operated under the department's SMU regulations, 103 Code Mass. Regs. §§ 423.00 (1995).[7] While confined in an SMU, prisoners are locked in their individual cells for twenty-three hours per day, with permitted recreation in a small, outdoor cage for one hour per day on weekdays and no permitted recreation on weekends; each prisoner must eat all meals alone in his or her cell; the prisoners are permitted ***748** to shower and shave no more than three times per week; all visits are noncontact visits, and these are generally limited to two visits per week of no more than one hour's duration; prisoners are not allowed to visit the general prison library, have no access to employment or to rehabilitative, therapeutic, or educational programs and therefore no access to programs from which they might earn "good time" sentence credits or reductions; they may not attend communal religious services; and they are substantially restricted, compared to the general prison population, in terms of what they may purchase and how much money they may spend at the prison canteen. These conditions are far more restrictive than the conditions and level of segregation applicable to general population prisoners in maximum security facilities. The conditions are also at least as restrictive as those applied to units designated as "departmental segregation units" (DSUs) and governed by the DSU regulations appearing as 103 Code Mass. Regs. §§ 421.00 (1994). However, none of the plaintiffs has been provided the procedural protections required by the DSU regulations, or the visitation, canteen, and other privileges included within the DSU regulations.[8]

The amended complaint's legal claims are that by maintaining the plaintiffs in nondisciplinary administrative segregation conditions without holding hearings to determine whether each posed a serious or substantial threat to themselves or others, and by denying other rights included in the DSU regulations, the defendants have violated the plaintiffs' rights under the DSU regulations, the plaintiffs' constitutional rights to due process protected by the United States Constitution and the Massachusetts Declaration of Rights (claims the plaintiffs pursue under 42 U.S.C. § 1983), and the plaintiffs' statutory right to equal "kindness" provided ***749** by G.L. c. 127, § 32. The plaintiffs seek declaratory and injunctive relief to declare and enforce these rights.

****1152** On January 20, 2012, the plaintiffs filed a motion for class certification.[9] Before the motion was heard or ruled on, *LaChance I* was decided. The plaintiff in *LaChance I* was, or had been, confined to the SMU in the Souza–Baranowski Correctional Center, and his substantive claims relating to his entitlement to the procedural and other protections incorporated in the DSU regulations are substantially mirrored in the plaintiffs' amended complaint in the present case. The motion judge in this case concluded that the *LaChance I* decision effectively resolved the plaintiffs' claims by defining the entire scope of procedural protections to which the plaintiffs were entitled as prisoners confined in SMUs. For this reason, and because the department had agreed to provide the plaintiffs with the procedural protections described in *LaChance I,* the judge ruled that class certification was unnecessary and that dismissal of the plaintiffs' amended complaint was appropriate. The judge ordered the defendants to "extend the benefits" of our opinion in *LaChance I* to "all prisoners held in administrative segregation on awaiting action status."

At the time of the motion judge's decision, one of the named plaintiffs, Albert Jackson, remained in an SMU. However, as the Appeals Court's decision noted, when the plaintiffs' appeal was before that court, it was uncontested that none of the named plaintiffs was still confined in an SMU. *Cantell,* 87 Mass.App.Ct. at 630, 33 N.E.3d 1255. There is nothing in the record to suggest that any named plaintiff's status has changed since the date of the Appeals Court decision, but there also is nothing before us to suggest that any of the named plaintiffs has completed his sentence and has been released from prison.

Discussion. 1. *Legal background.* This case concerns the department's policies and practices relating to the conditions of confinement ***750** for prisoners held in nondisciplinary administrative segregation and apart from the general population. The specific focus here is on SMUs, one type of administrative segregation unit.[10]

However, the department historically has had and continues to have a number of different types of and names for such units, including, ****1153** but not limited to, DSUs. In *Hoffer vs. Fair,* No. SJ–85–0071 (Mar. 3, 1988), a single justice of this court ordered that the then existing DSU regulations be amended to provide greater procedural protections and some greater privileges to prisoners placed in nondisciplinary administrative segregation—basically, solitary confinement—in DSUs. The department promulgated in substance the DSU regulations currently codified at 103 Code Mass. Regs. §§ 421.00 in response; these regulations remain in effect.[11] See *Haverty v. Commissioner of Correction,* 437 Mass. 737, 740, 744–746, 760, 776 N.E.2d 973 (2002), *S.C.,* 440 Mass. 1, 792 N.E.2d 989 (2003). We made clear in *Haverty* that under the department's DSU regulations and as a matter of due process, "the procedural protections contained in 103 Code Mass. Regs. §§ 421.00 must be afforded to all prisoners before they are housed in DSU-like conditions," with ***751** an exception for those whose stay in such a DSU-like unit is expected to be brief—i.e., days, not weeks. *Id.* at 760, 763–764 & n. 36, 776 N.E.2d 973. See *Longval v. Commissioner of Correction,* 448 Mass. 412, 413–416, 861 N.E.2d 760 (2007), and cases cited at 416; *Hoffer v. Commissioner of Correction,* 412 Mass. 450, 455, 589 N.E.2d 1231 (1992).

LaChance I was a case brought by a prisoner at the Souza–Baranowski Correctional Center who was held for more than ten months in administrative segregation, on awaiting action status, in that facility's SMU. *LaChance I,* 463 Mass. at 768–771, 978 N.E.2d 1199. He claimed that the conditions of confinement in the SMU were substantively identical to the conditions of a DSU, that he was therefore entitled to the protections set out in the DSU regulations, and that the refusal of the prison authorities to apply those regulations to him violated his rights under the department's regulations as well as his due process rights under the Federal and Massachusetts Constitutions. *Id.* at 772, 978 N.E.2d 1199. A judge of the Superior Court determined that LaChance was entitled to the procedural protections in the DSU regulations, and granted partial summary judgment to LaChance on his claims of constitutional violations. See *id.* at 772–773, 978 N.E.2d 1199. The judge also granted summary judgment to the defendant correction officials on LaChance's claim for damages under the Massachusetts Civil Rights Act, G.L. c. 12, §§ 11H & 11I, and his claims against two of the defendants in their official capacities. *LaChance I, supra* at 773, 978 N.E.2d 1199. However, the judge denied the defendants' motion for partial summary judgment on LaChance's claims for damages against the defendants in their individual capacities under 42 U.S.C. § 1983 (§ 1983), rejecting the defendants' argument that they were entitled to qualified immunity as a matter of law. *LaChance I,* supra. Exercising their right to invoke the doctrine of present execution with respect to this denial,[12] the defendants in *LaChance I* filed an interlocutory appeal in the Appeals Court, and we transferred the appeal to this court on our own motion. *Id.* at 768, 978 N.E.2d 1199.

The issue directly before us in *LaChance I* was the propriety of the judge's denial of partial summary judgment on the ****1154** defendants' claim of qualified immunity from liability for damages under § 1983. We concluded that an inmate placed in administrative segregation on awaiting action status in an SMU or other designated unit is entitled as a matter of due process to certain procedural ***752** safeguards, including notice of the basis on which he or she is so detained, a hearing at which the inmate may challenge that basis, and a written posthearing notice explaining the classification decision; and "that in no circumstances may an inmate be held in segregated confinement on awaiting action status for longer than ninety days without [such] a hearing." *Id.* at 776–777, 978 N.E.2d 1199. However, we also concluded that the plaintiff's claims for damages against the individual defendants under § 1983 were barred by the doctrine of qualified immunity. See *id.* at 777, 978 N.E.2d 1199. We did so because as a matter of constitutional requirement, "the outer limit of what constitutes 'reasonable' segregated confinement on awaiting action status without the safeguards of procedural due process" had not been clearly established as of 2006, the relevant date in *LaChance I.* See *id.* at 778, 978 N.E.2d 1199. Indeed, as we stated in the opinion, our determination that "segregated confinement on awaiting action status for longer than ninety days gives rise to a liberty interest entitling an inmate to notice and a hearing" was one that we reached "for the first time" in that case. See *id.*[13] We therefore remanded the case to the Superior Court for entry of an order allowing the defendants' motion for summary judgment on LaChance's claims under § 1983 against them in their individual capacities.[14] See *id.*

As discussed, the motion judge in this case based her dismissal of the plaintiffs' amended complaint on *LaChance I.*

2. *Mootness.* The defendants argue that this appeal is moot because none of the named plaintiffs remains in an SMU, and therefore none is a member of the class the plaintiffs seek to have certified. The Appeals Court

reached this same conclusion that the appeal is moot because the named plaintiffs are no longer in SMUs, and further concluded that, in the circumstances presented, ***753** it would be "improvident" to consider and resolve the plaintiffs' substantive claims on their merits. See *Cantell,* 87 Mass.App.Ct. at 630–631, 635, 33 N.E.3d 1255.[15] However, ****1155** we agree with the dissenting justice that the appeal is not moot. See *id.* at 636–637, 33 N.E.3d 1255 (Rubin, J., dissenting). It is not moot because the plaintiffs brought this case as a putative class action, and the class action allegations contained in the amended complaint remain operative until a judge has considered and rejected them on their merits. See *Wolf v. Commissioner of Pub. Welfare,* 367 Mass. 293, 297–298, 327 N.E.2d 885 (1975) (adopting rule followed by number of Federal courts "that a class action is not mooted by the settlement or termination of the named plaintiff's individual claim"). This is particularly true where, as the plaintiffs argue is the case here, it is within the defendants' power voluntarily to cease the allegedly wrongful conduct with respect to any named plaintiff by unilaterally deciding to release him from an SMU. "If the underlying controversy continues, a court will not allow a defendant's voluntary cessation of his allegedly wrongful conduct with respect to named plaintiffs to moot the case for the entire plaintiff class." *Id.* at 299, 327 N.E.2d 885.[16] The statement applies to the present case: the alleged ***754** wrongs set out in the amended complaint continue to affect the putative class of individuals who remain confined to SMUs.[17] In these circumstances, the plaintiffs' appeal is not subject to dismissal on mootness grounds.

3. *Dismissal of the amended complaint on the merits.* The motion judge ruled that certification of a plaintiff class was unnecessary, and indeed the named plaintiffs' amended complaint should be dismissed, based on her conclusion that *LaChance I* in effect fully defined the parameters of the plaintiffs' due process ****1156** rights, and that the defendants had agreed that they would implement those rights in relation to every prisoner confined to an SMU on awaiting action status.[18] Although her memorandum of decision does not so state, it appears that the judge interpreted *LaChance I* to overrule, in effect, *Haverty* and other decisions in which we concluded that the procedural protections contained in the DSU regulations must be provided to all prisoners in nondisciplinary administrative segregation who are subject to conditions similar to those in the DSUs. See *Haverty,* 437 Mass. at 740, 760, 763–764, 776 N.E.2d 973. In fairness, the scope of this court's decision in *LaChance I* was not fully explained. The motion judge, however, erred in her interpretation of our decision and in her dismissal of ***755** the amended complaint based on that interpretation.

As mentioned, *LaChance I* was an interlocutory appeal of a decision denying the defendants' claim of qualified immunity from liability for damages under § 1983. In considering the defendants' appeal, it was necessary to focus on LaChance's Federal due process claims because LaChance would be entitled to damages under his § 1983 claims only if the defendants knowingly violated LaChance's rights under the United States Constitution.[19] See *Cantell,* 87 Mass.App.Ct. at 638, 33 N.E.3d 1255 (Rubin, J., dissenting) ("the State law issue decided in *Haverty* was different from the issue the court was addressing in *LaChance [I],* that of *Federal* due process in the context of 42 U.S.C. § 1983" [emphasis in original]).[20] At no point in *LaChance I* did we suggest that we intended to overrule *Haverty* and related cases; in fact, the opposite is true. See ****1157** *LaChance I,* 463 Mass. at 774–775, 978 N.E.2d 1199, discussing *Haverty* with approval, and specifically noting the holding of *Haverty* that "under [the department's] regulations, indefinite confinement in any unit where conditions are substantially similar to those of a DSU entitles an inmate to the protections afforded by the DSU regulations." *Id.* at 774, 776 N.E.2d 973.

Haverty and related decisions of this court and the Appeals ***756** Court confirm the continuing viability of the department's DSU regulations and their application to "all placements of prisoners in segregated confinement for nondisciplinary reasons for an indefinite period of time; in other words, those prisoners whom prison authorities determine will interfere with the management of the prison unless they are segregated from the general prison population." *Haverty,* 437 Mass. at 760, 776 N.E.2d 973. See *id.* at 740, 776 N.E.2d 973. See also *Longval,* 448 Mass. at 416, 861 N.E.2d 760, and cases cited. Because *LaChance I* did not overrule *Haverty,* the plaintiffs are entitled to pursue in the Superior Court their motion to certify a class, and, on the merits, their claims that as prisoners confined to SMUs, they are entitled to have the DSU regulations applied to them and entitled to all the procedural protections and other rights included within those regulations.[21]

Conclusion. The judgment of the Superior Court is reversed, and the case remanded to that court for further proceedings consistent with this opinion.

So ordered.

All Citations 475 Mass. 745, 60 N.E.3d 1149

Footnotes

1 Derrick Maldonado, John T. Fernandes, and Albert Jackson.

2 Superintendent, Massachusetts Treatment Center; Superintendent, Old Colony Correctional Center; Superintendent, Massachusetts Correctional Institution (MCI), Cedar Junction; Superintendent, MCI, Shirley; Superintendent, MCI, Norfolk; Superintendent, MCI, Concord; Acting Superintendent, North Central Correctional Institution, Gardner; Superintendent, MCI, Framingham; and Superintendent, Souza–Baranowski Correctional Center.

3 Justices Spina, Cordy, and Duffly participated in the deliberation on this case prior to their retirements.

4 Two of the plaintiffs named in the amended complaint are not parties to the appeal.

5 We acknowledge the amicus briefs submitted by the Massachusetts Law Reform Institute, Center for Public Representation, National Consumer Law Center, and Justice Center of Southeastern Massachusetts; the American Civil Liberties Union, American Civil Liberties Union of Massachusetts, and the Mental Health Legal Advisors Committee; and Adam Sanders.

6 The amended complaint further alleges that the plaintiffs' claims include common questions of fact and law applicable to all members of the class and these questions predominate; the defendants have acted and refused to act on grounds generally applicable to the class so that the final declaratory and injunctive relief would be appropriate to the entire class; the plaintiffs have a strong personal liberty interest in the outcome of the case, are represented by competent counsel, and will adequately and fairly protect the interests of the class; and a class action is superior to any other method to resolving the controversy. See Mass. R. Civ. P. 23(a), (b), 365 Mass. 767 (1974).

7 "Administrative [s]egregation" is defined in 103 Code Mass. Regs. § 423.06 (1995) as follows:

> "A temporary form of separation from general population used when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the institution, e.g., inmates pending investigation for a disciplinary or criminal offense or pending transfer may be placed in administrative segregation."

8 The plaintiffs point to the following procedural protections contained in the DSU regulations: before being placed in nondisciplinary segregation, each prisoner must be afforded a timely hearing to determine whether the prisoner poses a threat sufficient to justify the segregation, see 103 Code Mass. Regs. § 421.08(3); no prisoner may be held in segregated, restrictive, nondisciplinary confinement without receiving a hearing after fifteen days, or thirty days if awaiting action on a disciplinary charge, and those time limits may not be extended absent "extraordinary circumstances," see *id.;* such prisoners are entitled to receive a conditional release date and a specified set of conditions that, if met, could earn them release from restrictive confinement, see 103 Code Mass. Regs. § 421.15(2); prisoners are also entitled to the visitation rights, canteen purchases, and other privileges and programs set out in 103 Code Mass. Regs. §§ 421.20 and 421.21.

9 The defendants take issue with the fact that the motion to certify the class was filed by the original two named plaintiffs, Robert Cantell and Derrick Maldonado, before the plaintiffs filed their amended complaint, and by the time the amended complaint was filed in April, 2012, neither Cantell nor Maldonado was still confined to a special management unit (SMU). In light of the

amended complaint, which repeated the original complaint's class action allegations, and in light of the fact that at the time the amended complaint was filed, one or more of the named plaintiffs was housed in an SMU, we consider the motion to certify the class as applicable to the amended complaint. This was the position implicitly taken by the Superior Court judge who considered and denied the motion to certify.

10 The SMU regulations provide that "[p]lacement in administrative segregation/protective custody [in an SMU] may occur in instances such as, but not limited to, when an inmate:
"(a) Is awaiting a hearing for a violation of institution rules or regulations;
"(b) Is awaiting an investigation of a serious violation of institution rules or regulations;
"(c) Is pending investigation for disciplinary offenses or criminal acts that may have occurred while incarcerated;
"(d) Requests admission to administrative segregation for his/her own protection or staff recommends that placement in or continuation of such status is necessary for the inmate's own protection and that no reasonable alternatives are available;
"(e) Is pending transfer;
"(f) Is pending classification; [and]
"(g) Is placed in administrative segregation following a disciplinary hearing."
103 Code Mass. Regs. § 423.08(1).

11 In 1995, the department filed in the county court a motion to vacate or amend the single justice's 1988 order in *Hoffer vs. Fair,* No. SJ–85–0071 (Mar. 3, 1988). A single justice of this court denied the motion, and no appeal was taken. See *Haverty v. Commissioner of Correction,* 437 Mass. 737, 738–739, 758 & n. 27, 776 N.E.2d 973 (2002), *S.C.,* 440 Mass. 1, 792 N.E.2d 989 (2003).

12 See, e.g., *Maxwell v. AIG Domestic Claims, Inc.,* 460 Mass. 91, 97–98, 950 N.E.2d 40 (2011); *Littles v. Commissioner of Correction,* 444 Mass. 871, 875–876, 832 N.E.2d 651 (2005).

13 As discussed *infra,* see notes 19 & 20 and accompanying text, it was necessary in *LaChance I* to consider the requirements of due process under the United States Constitution in particular, because to be entitled to damages against the individual defendants under 42 U.S.C. § 1983, LaChance was required to prove that, as of 2006, it was "clearly established" as a matter of Federal constitutional law that keeping a sentenced prisoner in segregated confinement on awaiting action status for longer than a particular period of time without a hearing incorporating certain procedural protections violated the prisoner's due process rights.

14 We also affirmed the Superior Court's order allowing (1) LaChance's motion for partial summary judgment on his constitutional claims, and (2) the defendants' motions for summary judgment on the Massachusetts Civil Rights Act claim and claims against certain defendants in their official capacities. *LaChance I,* 463 Mass. at 778, 978 N.E.2d 1199.

15 The Appeals Court stated that it reached its determination of mootness as a matter of discretion, because it interpreted *LaChance I* to require the department to promulgate new regulations, see *Cantell,* 87 Mass.App.Ct. at 632, 635, 33 N.E.3d 1255, and there was value in waiting for those new regulations to be issued before assessing the merits of the plaintiffs' due process claims. *Id.* at 635, 33 N.E.3d 1255.
To date, the department has not promulgated any such regulations; the department's response to the *LaChance I* decision has been limited to a memorandum from the commissioner, dated February 5, 2013, amending the "standard operating procedures" for SMUs "to reflect the additional review requirements for inmates on awaiting action or protective custody status for (90) days or more." The amended procedures provide that (1) within ninety days of an inmate's placement in an SMU and every ninety days thereafter, a correctional program officer is to review the placement and conduct a hearing, of which the inmate is entitled to forty-eight hours' notice and the right to attend and offer a verbal or written statement (but not to call witnesses or to have counsel); (2) the program officer is to make a recommendation within two days of the hearing as to whether the inmate should continue being confined in the SMU; (3) the inmate may appeal from that recommendation to the superintendent of the facility; and (4) the superintendent's decision is final.

16 The Appeals Court suggested that our decision in *Wolf* has been essentially superseded or at least limited by later decisions of this court, such that *Wolf* is presently best understood as an illustration of the principle that courts may hear moot cases if there is an important issue capable of repetition yet evading review, and "not as establishing a distinct procedural rule applicable to class actions." *Cantell,* 87 Mass.App.Ct. at 630 n. 8, 33 N.E.3d 1255. We do not agree that we have limited *Wolf* in this manner.

The statement in *Wolf* that, ordinarily, a judge should not dismiss a putative class action as moot even though actions taken by the defendant may have rendered moot the named plaintiff's particular claims is a principle that remains good law, as does the observation that "[i]n fact, to establish mootness in such circumstances, a defendant bears a heavy burden of showing that there is no reasonable expectation that the wrong will be repeated; and a defendant's mere assurances on this point may well not be sufficient." *Wolf,* 367 Mass. at 299, 327 N.E.2d 885. Our decision in *Gonzalez v. Commissioner of Correction,* 407 Mass. 448, 553 N.E.2d 1295 (1990), cited by the Appeals Court, see *Cantell, supra,* is not to the contrary. We specifically noted there, citing *Wolf,* that in a case where "a defendant's voluntary cessation of allegedly wrongful conduct toward the named plaintiff, thereby mooting his or her claim," has occurred, it may be appropriate to certify the putative class despite this mootness issue. *Gonzalez, supra* at 452, 553 N.E.2d 1295.

17 It is also true case that because the named plaintiffs in this case remain incarcerated, they remain subject to being returned to confinement in an SMU. They continue, therefore, to have a real stake in the outcome.

18 As discussed, the rights described in *LaChance I* were the right "to notice of the basis on which [the inmate] is ... detained [in administrative segregation]; a hearing at which [the inmate] may contest the asserted rationale for his confinement; and a posthearing written notice explaining the reviewing authority's classification decision.... [I]n no circumstances may an inmate be held in segregated confinement on awaiting action status for longer than ninety days without a hearing." *LaChance I,* 463 Mass. at 776–777, 978 N.E.2d 1199.

19 See, e.g., *Parratt v. Taylor,* 451 U.S. 527, 535, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), overruled in part on other ground, *Daniels v. Williams,* 474 U.S. 327, 328, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986) (two essential elements of action under 42 U.S.C. § 1983 are [1] that challenged conduct be committed by person acting under color of State law, and [2] "whether this conduct deprived a person of rights, privileges, or immunities *secured by the Constitution or laws of the United States*" [emphasis added]); *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 150, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970) (same).

20 In *LaChance I,* we discussed LaChance's "due process rights" without drawing any distinction between the due process protections provided by the United States Constitution and the Massachusetts Constitution. As stated in the text, however, for purposes of deciding the individual defendants' claim of qualified immunity from suit under 42 U.S.C. § 1983, it was essential to focus on LaChance's due process rights protected under the Federal Constitution. We had no reason to, and did not, consider in *LaChance I* whether the extent of due process protections to which a prisoner in the position of LaChance is entitled under art. 12 of the Massachusetts Declaration of Rights is different in scope from the protections provided by the due process clause in the United States Constitution. (To the extent that *Haverty,* 437 Mass. at 762–763, 776 N.E.2d 973, concluded that the rights of the plaintiffs in that case to have the DSU regulations applied to them was constitutionally required as a matter of due process, the conclusion appears to have had its roots in the decision of the single justice in *Hoffer vs. Fair,* No. SJ–85–0071. See *Haverty, supra* at 738–739, 744–745, 776 N.E.2d 973. *Hoffer vs. Fair* itself was based on the requirements of due process under the Constitution of the Commonwealth.)

21 *LaChance I* was not a class action, and the plaintiffs here, although raising similar regulatory and constitutional challenges as LaChance, were not parties to the *LaChance I* case. Moreover, LaChance was confined to an SMU on awaiting action status; the class the plaintiffs seek to represent is broader. Contrary to a suggestion of the plaintiffs in their brief, it is also the case that the motion judge in the present case has not made any findings of fact, but ruled on nonevidentiary motions. Accordingly, neither *LaChance I* nor prior proceedings in this case have resolved the merits of the plaintiffs' claims.