

2010 WL 6610736 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Essex County

Edmund LACHANCE,
v.
Harold W. CLARKE,¹ & others.²
No. 06-CV-1246-C.
April 5, 2010.

Memorandum of Decision and Order on Parties' Cross-Motions for Summary Judgment

Thomas R. Murtagh, Judge.

INTRODUCTION

The plaintiff, Edmund LaChance ("LaChance"), is an inmate confined at the Souza Baranowski Correction Center (the "SBCC"), a maximum security prison in Shirley, Massachusetts. LaChance filed his complaint against the defendants, Harold W. Clarke, Commissioner of Corrections, and Thomas Dickhaut, Superintendent of SBCC, in their official capacities, Kathleen Dennehy, former Commissioner of Corrections, Roland Rheault, former Assistant Director of Classification, and Lois Russo, former Superintendent of SBCC, in their individual capacities, and Anthony Mendonsa, Deputy Superintendent for Classification, and Michael Rodrigues, Director of Classification, in their official and individual capacities (collectively the "State Defendants"), seeking declaratory relief and monetary damages for his confinement in the Special Management Unit (the "SMU") without the benefit of the procedural protections afforded by 103 Code Mass. Regs. §§ 421.00, et seq., the Departmental Segregation Unit regulations (the "DSU regulations"). LaChance asserts his confinement violated his state and federal constitutional rights to equal protection and due process, his statutory right to equal "kindness," pursuant to G. L. c. 127, § 32, and court-mandated protective custody policies.³ LaChance seeks money damages for these alleged violations, pursuant to G. L. c. 12, § 111, the Massachusetts Civil Rights Act (the "MCRA"), and 42 U.S.C. § 1983, the Federal Civil

The matter is currently before the court on two matters. The first matter is LaChance's Motion for Partial Summary Judgment, requesting a declaration that his confinement in the SMU was substantially equivalent to confinement in a disciplinary segregation unit and, as such, his confinement without the procedural protections afforded by the DSU regulations violated his constitutional rights to due process.⁴ The second matter is the State Defendants' Cross-Motion for Summary Judgment, requesting a declaration that LaChance's confinement in the SMU was governed by 103 Code Mass. Regs. § 423.00, et seq., the Special Management Unit regulations, not the DSU regulations, and that his confinement comported with constitutional requirements. The State Defendants also request a determination as to whether they are entitled to qualified immunity with respect to LaChance's claims for monetary relief. For the reasons set forth below, LaChance's motion will be **ALLOWED** and the State Defendants' motion will be *DENIED*.

BACKGROUND

The undisputed material facts are as follows.⁵

I. LaChance's Detention in the SMU

Starting on July 23, 2004, LaChance was housed in the J-1 Protective Custody Unit (the "J-1 Unit") of the SBCC. On December 21, 2005, LaChance received a disciplinary report for throwing a cup of pudding at a fellow inmate and thereafter, was placed in segregation in the SMU. The following day, he received a second disciplinary report for making a threat toward the other inmate involved in the pudding altercation.⁶ After his two-week disciplinary sanction ended, LaChance was held in the SMU for an administrative segregation on awaiting action status for over ten months.⁷ Throughout his confinement in the SMU, LaChance never received a hearing. Although prison officials sought to transfer LaChance to another facility, they were unable to do so and he was ultimately returned to the J-1 Unit on November 15, 2006, where he still resides.

During the time LaChance was held in the SMU, he was severely restricted. LaChance was allowed only one-hour out of his cell each day for recreation, limited to the "recreation deck," where he was kept in a cage-like structure exposed to heat or cold depending on the weather. He was limited to two one-hour non-contact visits per week. LaChance was allowed only a limited amount of personal property in his cell and his canteen privileges were limited to twenty dollars per week. In addition, while in the SMU, whenever LaChance left his cell, his wrists were handcuffed behind his back, his legs were shackled, and he had a two-guard escort. In the J-1 Unit, LaChance enjoyed considerably greater recreation time, visits, personal property, and canteen privileges.⁸

II. Confiscation of LaChance's Legal Papers

On January 10, 2006, two correctional officers entered LaChance's cell in the SMU and confiscated papers in his possession, several of which were legal documents. That same day, LaChance wrote to defendant, Lois Russo, Superintendent of the SBCC, requesting the return of his papers. This request was denied because, according to Duane MacEachern, Deputy Superintendent, the Inmate Property regulations "do[] not authorize the retention of letterhead." The letterhead consisted of paper printed with LaChance's name, prison identification number, and his address at the SBCC. LaChance filed a grievance pertaining to this matter and the Grievance Coordinator, Brian Carney, offered to return a single cover-letter addressed to a court clerk with the letterhead removed, but no other documents. LaChance refused this offer.

DISCUSSION

I. Standard of Review

Summary judgment is appropriate when the record reveals "there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law." Mass. R. Civ. P. 56(c). The moving party bears the initial burden of demonstrating the absence of a triable issue and that the summary judgment record entitles him to judgment as a matter of law. *Ng Bros. Constr., Inc. v. Cranney*, 436 Mass. 638, 644 (2002), citing *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989). Once the moving party demonstrates the absence of a triable issue, the non-moving party must set forth specific facts establishing the existence of a genuine dispute as to a material fact. *Correllas v. Viveiros*, 410 Mass. 314, 317 (1991). The non-moving party cannot defeat the motion for summary judgment by resting on its pleadings. *Id.* The court views the evidence in the light most favorable to the non-moving party, but does not weigh the evidence, assess credibility, or find

facts. *Attorney Gen. v. Bailey*, 386 Mass. 367, 370-371 (1982).

II. LaChance's Motion for Partial Summary Judgment

In support of his motion for summary judgment, LaChance argues that the SMU is subject to the DSU regulations and that his confinement in the SMU without the benefit of these regulations violated mandatory protective custody policies and his constitutional rights to due process. In response, the State Defendants contend the Department of Correction (the "Department") utilizes restrictive confinement for a variety of reasons, not all of which require application of the DSU regulations. The State Defendants claim LaChance was lawfully held in the SMU pursuant to 103 Code Mass. Regs. § 423.00, et seq., the Special Management Unit regulations, and his confinement comported with both the Department's regulations and federal and state constitutional requirements.

A. LaChance's Confinement in the SMU

1. Application of the Segregation Regulations

First, the court must determine whether the DSU regulations were applicable to LaChance's confinement in the SMU. LaChance argues that because his administrative segregation in the SMU was substantially similar to confinement in a disciplinary segregation unit, he was entitled to the procedural protections afforded by the DSU regulations. The State Defendants contend the DSU regulations are inapplicable to the circumstances of this case because LaChance was placed in the SMU for an administrative segregation on awaiting action status, and he was not confined to a disciplinary segregation unit. The court is not persuaded by the State Defendants' argument as a very similar argument was made and rejected by the Supreme Judicial Court in *Haverty v. Commissioner of Corr.* 437 Mass. 737, 763 (2002),

In *Haverty*, inmates from the Massachusetts Correctional Institution at Cedar Junction ("MCI-Cedar Junction") asserted claims against prison officials because the inmates were placed in solitary or near solitary confinement for non-disciplinary reasons for an indefinite duration without the due process protections afforded by the DSU regulations. *Id.* at 739. The inmates argued they were entitled to the procedural due process protections applicable to prisoners segregated for non-disciplinary reasons, i.e., the protections set forth in the DSU regulations, because their confinement was comparable to confinement in a disciplinary segregation unit. *Id.* The Commissioner of Corrections (the "Commissioner") argued the DSU regulations had no force or effect because MCI-Cedar Junction's disciplinary segregation unit had been abolished. *Id.* at 757-758 n.27. The Supreme Judicial Court rejected the Commissioner's argument stating, "the procedural protections contained in [the DSU regulations] must be afforded to all prisoners before they are housed in DSU-like conditions" *Id.* at 763.

In reaching its conclusion, the Supreme Judicial Court specifically stated that the label prison officials assign to a specific unit is not dispositive with respect to determining whether the DSU regulations apply. *Id.* at 759-760 ("The defendants' suggestion that the procedural protections contained in [the DSU regulations] are applicable only to those housing placements that the [C]ommissioner may choose to label as 'departmental segregation units' has been rejected, more than once."), citing *Longval v. Commissioner of Corr.*, 404 Mass. 325, 328-329 (1989) and *Martino v. Hogan*, 37 Mass. App. Ct. 710, 721 (1994), rev. denied, 419 Mass. 1106 (1995). According to the Supreme Judicial Court, the DSU regulations "prohibit the segregated confinement of prisoners for non-disciplinary reasons without due process [and] [w]hether such prisoners are housed in a unit labeled a disciplinary segregation unit or [a unit labeled something else] is not relevant to the applicability of the regulations." *Id.* at 761 n.31. The Department "may not sidestep statutory and regulatory provisions stating the rights of an inmate as to his placement in a [disciplinary segregation unit] by assigning as a pretext another name to such a unit." *Longval*, 404 Mass. at 328-329; see also *Martino*, 37 Mass. App. Ct. at 721 ("where the conditions in a segregation unit,

however named by the correction officials, were as severe as those at the [disciplinary segregation unit], the unit should be dealt with, at least for such purposes as requirements of hearings and so forth, as a [disciplinary segregation unit].”). Thus, it is of no consequence that LaChance was confined to a unit labeled a “special management unit” rather than a unit labeled a “disciplinary segregation unit.”

The test for determining the applicability of the DSU regulations is whether the conditions of confinement are substantially similar to those found in a disciplinary segregation unit. *Id.* at 755 (“Prisoners may not be placed in segregation for non-disciplinary reasons with conditions as severe as those of a [disciplinary segregation unit] without the procedural protections afforded by [the DSU regulations].”). To determine whether restrictive confinement is substantially similar to confinement in a disciplinary segregation unit, and therefore whether it requires application of the DSU regulations, the Supreme Judicial Court instructs courts to examine the totality of the circumstances surrounding the restrictive confinement. See *id.* at 756-757. Although no one factor is determinative, the Supreme Judicial Court, in *Haverty*, placed particular emphasis on two factors: (1) whether the segregation was in solitary confinement; and (2) whether it was for an indeterminate period of time. *Id.* at 756-757.

Here, LaChance was placed in the SMU without a conditional release date. He was placed in a cell by himself and allowed out for approximately one-hour per day for recreation. His recreation area consisted of a cage-like structure on the “recreation deck” attached to the SMU. LaChance was limited to two one-hour non-contact visits per week. He was allowed to keep only limited personal property in his SMU cell and his canteen privileges were limited to twenty dollars per week. These conditions are remarkably similar to the conditions that were challenged by the inmates in *Haverty* and which were found to be substantially similar to the conditions in a DSU.⁹ *Id.* at 747. Therefore, the court concludes LaChance’s confinement in the SMU was substantially similar to confinement in a disciplinary segregation unit and he was entitled to the procedural protections afforded by the DSU regulations.¹⁰

A. Due Process

Next, the court must address LaChance’s due process claims. LaChance contends the failure to provide him with the procedural protections set forth in the DSU regulations violated his state and federal constitutional due process rights, and seeks a declaration stating such.¹¹ Relying principally on *Sandin v. Conner*, 515 U.S. 472, 484 (1995) and *Wilkinson v. Austin*, 545 U.S. 209, 223 (2005), the State Defendants argue the procedures set forth in 103 Code Mass. Regs. §§ 423.00, et seq., the Special Management Unit regulations, provided LaChance with adequate due process under both the state and federal constitutions. Further, the State Defendants argue LaChance has not demonstrated his confinement in the SMU constituted an “atypical and significant hardship.” *Sandin*, 515 U.S. at 484.

2. State Due Process Violations

In 1988, a single justice of the Supreme Judicial Court directed the Department to promulgate new regulations, applicable to all state correctional facilities, governing the transfer of inmates from the general prison population to any disciplinary segregation unit. See *Hoffer v. Fair*, No. SJ-85-0071 (March 3, 1988) (Liacos, J.). In 1993, those new regulations, i.e., the DSU regulations, were enacted.¹² See *Haverty*, 437 Mass. at 738. In 1995, following numerous instances of inmate violence and multiple “lock downs” at MCI-Cedar Junction, the Commissioner began administrative proceedings to repeal the DSU regulations. *Id.* at 745. The repeal, however, was prevented by an injunction issued by the single justice in response to a motion by the *Hoffer* plaintiffs. *Id.* The Commissioner did not appeal the injunction to the full - court, and the DSU regulations were not repealed. *Id.* More recently, in *Haverty*, the Supreme Judicial Court stated the DSU regulations are a “constitutionally required regulatory scheme ... that continues to have the force of law.” *Id.* at 762. Thus, the failure to provide LaChance with the protections afforded by the DSU regulations violated his state constitutional rights to due process.

3. Federal Due Process violations

The *Sandin* case establishes the way in which courts examine due process challenges related to prison conditions. See *Tyree v. Weld*, 2010 WL 145882 at *6 (D. Mass. 2010). Under *Sandin*, an inmate is entitled to the protections of procedural due process only when an existing liberty or property interest is at stake. 515 U.S. at 484. Whether a restrictive condition imposed on a prisoner implicates a liberty interest depends upon whether the restraint “imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.*

Here, LaChance was assigned to the SMU without a conditional release date; he was allowed out of his cell for only one hour per day for recreation; his recreation area was limited to the “recreation deck;” he was limited to two one-hour non-contact visits per week; he could keep only a limited amount of personal property in his cell; his canteen privileges were limited to twenty dollars per week; and he had limited opportunities to participate in educational and vocational programs. “Taken together, the deprivations suffered by [LaChance] and the indefinite duration of [his] stay in restrictive housing constitute ‘an atypical and significant hardship’ when compared to any reasonable baseline.” *Tyree*, 2010 WL 145882 *13, citing *Wilkinson*, 545 U.S. at 223-224. LaChance had a valid liberty interest in avoiding placement in restrictive confinement.

If a liberty interest exists, as is the case here, courts analyze the procedural protections afforded the prisoner under *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Tree*, 2010 WL 145882 * 13. The *Mathews* test weighs three factors: (1) the private liberty interest at risk; (2) the risk of erroneous deprivation and the utility of more process in diminishing that risk; and (3) the government’s interest. *Mathews*, 424 U.S. at 335. First, as to LaChance’s liberty interest, his assignment to the SMU clearly implicated a liberty interest because it affected his access to social events, job opportunities, and physical recreation. See, e.g., *Tyree*, 2010 WL 145882 *13. Next, as to the risk of erroneous deprivation and the extent to which additional procedural safeguards could have reduced this risk, LaChance was placed in the SMU without any determination as to whether “his continued presence in a general institution population would be detrimental to the program of the institution.” See 103 Code Mass. Regs. § 421.01. “It follows that more procedural safeguards—even if only those required by regulation—would have reduced the risk of erroneous deprivations.” *Id.* Finally, with respect to the government’s interest, “[a]lthough the government... has an interest in avoiding the imposition of new, costly, and complicated procedural requirements, especially in the context of a... prison,” problems arise when prison officials provide “no meaningful process at all.” See *id.* LaChance’s confinement in the SMU, without the application of, even minimal, procedural safeguards violated his federal constitutional due process rights.

For the reasons explained, LaChance’s Motion for Summary Judgment must be *ALLOWED*. The court concludes LaChance is entitled to a declaration that: (1) his confinement in the SMU was substantially similar to confinement in a disciplinary segregation unit; and (2) the failure to provide him with procedural due process protections was a violation of his state and federal constitutional due process rights. Such a declaration, however, does not guarantee LaChance an award of money damages.

III. The State Defendants’ Cross Motion for Summary Judgment

In addition to the arguments asserted above, in their Cross-Motion for Summary Judgment, the State Defendants contend they are entitled to summary judgment on LaChance’s civil rights claims, i.e., the claims on which his request for monetary relief is based. The State Defendants contend that: (1) LaChance has failed to present a viable civil rights claim under either the MCRA or Section 1983; and (2) even if the court concludes he is able to do so, they are entitled to qualified immunity.

A. Civil Rights Claims

1. The MCRA

The MCRA affords a private remedy for interference “by threats, intimidation or coercion ... with the exercise or enjoyment by any other person or persons of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of the commonwealth.” G.L. c. 12, § 11(H) & (I). “[T]hreats, intimidation or coercion” constitute an essential element of any claim under the MCRA.¹³ *Layne v. Superintendent, Mass. Correctional Inst., Cedar Junction*, 406 Mass. 156, 158 (1989). Even a direct violation of constitutional or statutory rights, cannot implicate the MCRA without threats, intimidation, or coercion. *Planned Parenthood League of Mass., Inc.*, 417 Mass. at 473. Further, the decision to discipline a prisoner, in the absence of explicit threats, intimidation or coercion, does not create a cause of action under the MCRA. *Messee v. Commissioner of Corr.*, 27 Mass. App. Ct. 542, 549 (1989); see also *Longval*, 404 Mass. at 333 (stating there is “no coercion, within the meaning of the [MCRA], simply from the use of force of prison officials, authorized to use force, in order to compel a prisoner to do something he would not willingly do, even if it turns out that the official had no lawful right to compel the prisoner to take that action”).

Here, LaChance has failed to state a viable claim under the MCRA. LaChance has offered no evidence that the State Defendants violated any of his constitutional or statutory rights through the use of threats, intimidation or coercion, an essential element of a claim under the MCRA. The court concludes the State Defendants are entitled to summary judgment on LaChance’s state civil rights claim.

2. Section 1983

Section 1983 of 42 U.S.C. states, in pertinent part, that “[e]very person who, under color of any statute,... of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress” To establish a claim for monetary damages premised on Section 1983, “a plaintiff must show that the conduct complained of was committed by a person acting under color of State law and that the conduct deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States.” *McNamara v. Honeyman*, 406 Mass. 43, 52 (1989) (internal citations omitted). Here, LaChance’s claims for damages under Section 1983 flow from the violations of his federal constitutional due process rights.

There are, however, specific guidelines regarding who may be sued under Section 1983. The Commonwealth of Massachusetts cannot be sued for civil rights violations, as “the Commonwealth is not a ‘person’ under Section 1983.” *Id.*, citing *Woodbridge v. Worcester State Hosp.*, 384 Mass. 38, 44 n.7 (1981). Further, when an official acts in his official capacity, he also is not a person for purpose of 42 U.S.C. § 1983. *Id.*, citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). “Money damages against State officials are available only if they are sued in their individual or personal capacities for actions under color of State law. *O’Malley v. Sheriff of Worcester County*, 415 Mass. 132, 141 (1993) (internal citations omitted). To recover against individual defendant officials, a plaintiff must sue them in their individual capacity for actions they took in their official capacity. See *id.* at 142.

LaChance sues defendants Harold W. Clarke, Commissioner of Corrections, and Thomas Dickhaut, Superintendent of SBCC, in their official capacities. Based on the standards set forth above, Harold W. Clark and Thomas Dickhaut are entitled to summary judgment on LaChance’s claims arising under Section 1983. LaChance cannot recover money damages against these defendants as he sues them in their official capacities, which is tantamount to suing the Commonwealth. See *Will*, 491 U.S. at 71 (stating a plaintiffs’ recovery is limited to equitable relief where a state official is sued in his official capacity).

a. Qualified Immunity

The State Defendants argue they are entitled to qualified immunity because they did not violate clearly established statutory or constitutional rights. In particular, they contend that even if the conditions of LaChance's confinement are comparable in severity and duration to confinement in a disciplinary segregation unit, it is not clearly established that the procedures in the DSU regulations are constitutionally required.

"Public officials accused of civil rights violations may raise the defense of qualified immunity as a shield against claims for damages arising out of their actions." *Stella v. Kelley*, 63 F.3d 71, 73 (1st Cir. 1995), citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The doctrine shields public officials from suits for damages unless the official has "directly participated in violating the plaintiff's] 'clearly established' rights." *O'Malley*, 415 Mass. at 142, citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "The defendant must have acted 'either outside the scope of his respective office, or if within the scope,... in an arbitrary manner, grossly abusing the lawful powers of his office.'" *Id.*, quoting *Scheuer v. Rhodes*, 416 U.S. 232, 235 (1974). Furthermore, for a right to be clearly established, the unlawfulness of the defendant's conduct must be "apparent" based on then existing law. *Ahmad v. Department of Corr.*, 446 Mass. 479, 484 (2006). To determine whether an official would have known that his conduct violated a clearly established right, the court makes an objective inquiry into the legal reasonableness of the official's conduct. See *Clancy v. McCabe*, 441 Mass. 311, 323 (2004). This is a question of law. *Id.*

The United States District Court for the District of Massachusetts recently addressed the qualified immunity question in a case substantially similar to the case at bar. See *Tyree*, 2010 WL 145882 *11-15. *Tyree* involved the same prison and substantially similar facts as were at issue in *Haverty*. *Id.* at *1. *Tyree* arose from allegations that prisoners at MCI-Cedar Junction were held in solitary or near solitary confinement for indefinite durations without due process protections. *Id.* Following the holding in *Haverty*, the state defendants in *Tyree* moved for summary judgment based on qualified immunity. *Id.*

After a thorough review of the relevant case law, the District Court, in *Tyree*, concluded that it was clearly settled in Massachusetts that "in a unit with conditions substantially similar to a [disciplinary segregation unit], correction officials were required to afford the prisoners a hearing pursuant to Massachusetts regulations." *Id.* at *9. Despite this conclusion, the District Court ultimately found in favor of the state defendants on the qualified immunity issue because "it would not have been apparent to a reasonable official in their position that the conditions [of the plaintiffs' confinement] ... were sufficiently similar to the conditions in a [disciplinary segregation unit] to trigger the procedural protections provided in the DSU regulations." *Id.* at *15.

There is, however, an important distinction to be made between *Tyree* and the current case--the facts underlying the claims in *Tyree* took place either before or contemporaneously with the facts underlying the decision in *Haverty*. Here, LaChance's confinement in the SMU took place well after the Supreme Judicial Court's decision in *Haverty* and the State Defendants had the benefit of the *Haverty* decision when they confined LaChance in the SMU. At that point, *Haverty* had already articulated the substantial similarity rule and had also explained the criteria that were to be applied when judging substantial similarity. See *Haverty*, 437 Mass. 755-757.

Here, the question is whether it was clear that LaChance was confined in conditions that were substantially similar to a disciplinary segregation unit. The court concludes this must be answered in the affirmative. The restrictions at issue in the present case are very similar to the restrictions that were at issue in *Haverty*, which the Supreme Judicial Court found to be substantially similar to the conditions present in a disciplinary segregation unit. See *Haverty*, 437 Mass. at 756-757. After *Haverty*, it should have been clear to the State Defendants that the conditions of LaChance's confinement were substantially similar to confinement in a disciplinary segregation unit and further, those conditions triggered the constitutional procedural protections provided by the DSU regulations. See *Longval*, 448 Mass. at 422; see also *Ahmad*, 446 Mass. at 484.

There are, however, issues of fact as to which of the named defendants, if any, directly participated in the violation of LaChance's federal due process rights. See *O'Malley*, 415 Mass. at 142; see also *Martino*, 37 Mass. App. Ct. at 719 (discussing the direct participation requirement). The State Defendants' Motion for Summary judgment is precluded, except with respect to Harold W. Clarke and Thomas Dickhaut, because there are issues of fact regarding the qualified immunity

question.

IV. Confiscation of LaChance's Legal Papers

Lastly, LaChance argues his legal papers were confiscated in violation of 103 Code Mass. Regs., §§ 403.00, et. Seq., the Inmate Property regulations, and seeks a declaration stating such. The State Defendants do not argue that they did not violate the Inmate Property regulations; rather, they contend that: (1) LaChance has not demonstrated the confiscation of his legal papers prejudiced his ability to access the courts; and (2) the matter is moot because "upon their location," the legal documents will be returned to LaChance.

The Inmate Property regulations state that inmates may possess "not more than one cubic foot of legal documents." 103 Code Mass. Regs. § 403.09(h). The provision is clear and unambiguous. The State Defendants confiscated LaChance's legal papers, despite the fact that he was within the one cubic foot guideline. Because LaChance merely seeks a declaration that the State Defendants violated this provision, he need not establish prejudice. Further, this matter is not moot because, as of the date of the filing of the parties' motions for summary judgment, the State Defendants had not yet returned LaChance's legal papers. The court concludes the State Defendants violated 103 Code Mass. Regs. § 403.09(h).

ORDER

For the reasons set forth above, it is hereby *ORDERED* that:

(1) LaChance's Partial Motion for Summary Judgment is *ALLOWED*. The court grants LaChance the declaratory relief he requested. The court declares and rules that:

1. the conditions of LaChance's confinement in the SMU were substantially similar to - conditions of confinement in a disciplinary segregation unit;
2. the State Defendants violated LaChance's federal and state constitutional due process rights by failing to provide him with the procedural protections afforded by 103 Code Mass. Regs. §§ 421.00, et seq., the DSU regulations; and
3. the State Defendants confiscated LaChance's legal papers in violation of 103 Code Mass. Regs. § 403.09(h).

(2) The State Defendants' Cross-Motion for Summary Judgment is *ALLOWED* in part and *DENIED* in part. Summary Judgment is *ALLOWED* as to all the State Defendants on LaChance's claims under the Massachusetts Civil Rights Act. Summary Judgment is *ALLOWED* as to Harold W. Clark, as Commissioner of Corrections, in his official capacity, and Thomas Dickahaut, as Superintendent of SBCC, in his official capacity, on LaChance's claims under 42 U.S.C. § 1983, but *DENIED* as to the remaining State Defendants because there are issues of fact with respect to the qualified immunity issue.

SO ORDERED.

<<signature>>

Thomas R. Murtagh

Justice of the Superior Court

Dated: April 5, 2010

Footnotes

- ¹ As Commissioner of Corrections, in his official capacity
- ² Thomas Dickhaut, Superintendent of SBCC, in his official capacity; Kathleen Dennehy, former Commissioner of Corrections, Roland Rheault, former Assistant Director of Classification, Lois Russo, former Superintendent of SBCC, in their individual capacities; and Anthony Mendonsa, Deputy Superintendent for Classification, and Michael Rodrigues, Director of Classification, in their official and individual capacities
- ³ LaChance also claims that his legal papers were seized in violation 103 Code Mass. Regs. 403.00, et seq., the Inmate Property regulations. Rights Act (“Section 1983”).
- ⁴ At this time, LaChance does not seek summary judgment on the issue of damages.
- ⁵ The court notes there are no disputed issues of material fact relevant to the resolution of the matters currently before the court. The State Defendants do not dispute that LaChance was confined in the SMU for approximately ten months nor do they challenge the conditions of his confinement in any substantial way.
- ⁶ According to the SBCC’s disciplinary records, LaChance, when referring to the other inmate involved in the pudding altercation, stated, “[w]hen I get out of here I’m going to pound that asshole.”
- ⁷ LaChance was held in administrative segregation in the SMU from January 5, 2006 to November 15, 2006: from January 11, 2006 to January 31, 2006, he was held on “awaiting reclassification” status; from February 1, 2006 to April 2, 2006, he was held on “pending classification/transfer” status; from April 3, 2006 to August 28, 2006, he was held on “pending out of state transfer” status; from August 29, 2006 to November 15, 2006, he was held on “awaiting action pending classification” status.
- ⁸ More specifically, in the J- Unit, LaChance was permitted at least four hours and forty-five minutes outside his cell each day. The recreation areas included the “recreation deck” abutting the cell block, the yard, the gym, and the weight room. He was allowed three two and a half-hour contact visits per week. He was permitted a wide range of property such as a television, a typewriter, a radio, headphones, a fan, family photo albums, ten non-religious books, perishable canteen items, hygiene products, three pairs of footwear, and various pieces of clothing. In addition, while in the J-1 Unit, LaChance was allowed to participate in religious services, treatment programs, educational programs, and vocational programs, which were denied to him while confined in the SMU.
- ⁹ The inmates in *Haverty* were kept in single-man cells except for brief periods of time; they took their meals in their cells; they were allowed out of their cells for only ninety minutes per day; they did not interact with the other prisoners or participate in collective activities; their canteen funds were limited to thirty dollars, and they had limited job opportunities. 437 Mass. at 747.
- ¹⁰ The State Defendants argue LaChance was kept in administrative segregation on awaiting action status to protect other inmates and to better manage the prison. The court rejects these arguments. Neither the motivations behind placing a particular inmate in restrictive confinement nor the status label assigned to an inmate while in restrictive confinement are relevant. The DSU regulations “are applicable to all placements of prisoners in segregated confinement for non-disciplinary reasons for an indefinite period of time; in other words, [even] 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. “Prison overcrowding, longer prison sentences, and the prosecution of gang-related crimes have made prison management throughout our prison system more difficult. But

the solution cannot be found in the violation of a constitutionally required regulatory scheme, one that continues to have the force of law.” *Id.* at 752. Furthermore, even before *Haverty* it was settled that “prison administrators ‘may not abuse their discretion ... by using awaiting action status as a means to accomplish an unlimited punishment immune to the procedures set forth in the rules and regulations.’ ” *Id.* at 755, quoting *Royce v. Commissioner of Corr.*, 390 Mass. 425, 429-430 (1983).

- ¹¹ LaChance also argues that even if the SMU were not equivalent to a DSU and subject to the DSU regulations, his confinement violated his due process rights because the Department failed to comply with court-mandated protective custody policies pursuant to *Blaney v. Commissioner of Corr.*, SJ No. J-74-88 (March 7, 1980), which limits the amount of time a prisoner may be held in a segregation unit on awaiting action status. Because the court concludes LaChance’s confinement in the SMU was equivalent to confinement in a disciplinary segregation unit and subject to the DSU regulations, the court need not determine whether the Department violated protective custody policies.
- ¹² The DSU regulations “make clear that a prisoner may not be segregated and denied interaction with other prisoners in the institution for non-disciplinary reasons without receiving certain procedural protections.” *Haverty*, 437 Mass. at 745 n.16. The DSU regulations establish substantive criteria that must be met before any inmate is placed in a disciplinary segregation unit, see 103 Code Mass. Regs. §§ 421.07 and 421.09, and procedural rights that must be afforded any prisoner so placed. See, e.g., 103 Code Mass. Regs. §§ 421.10-421.11 (establishing right to written notice and representation at hearing before DSU Board); and §§ 421.18-421.19 (establishing right to status review and right to monthly evaluations).
- ¹³ The Supreme Judicial Court has approved definitions for the terms “threat,” “intimidation,” and “coercion.” “Threat” has been deemed the “intentional assertion of pressure to make another fearful or apprehensive of injury or harm.” *Planned Parenthood League of Mass., Inc. v. Blake*, 417 Mass. 467, 474 (1994). “Intimidation” has been defined as “putting [a person] in fear for the purpose of compelling or deterring conduct.” *Id.* Finally, “coercion” has been termed “the application to another of such force, either physical or moral, as to constrain [a person] to do against his will something he would not otherwise have done.” *Daes v. Dempsey*, 403 Mass. 468, 470 (1988); see also *Planned Parenthood League of Mass. Inc.*, 417 Mass. at 474.