

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUPREME JUDICIAL COURT NO. 13212

COMMONWEALTH

v.

TIMOTHY RODERICK

DEFENDANT'S REPLY BRIEF ON APPEAL FROM
THE PLYMOUTH COUNTY SUPERIOR COURT

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ARGUMENT

I. THE COMMONWEALTH CANNOT SATISFY ITS BURDEN OF PROVING THE REASONABLENESS OF GPS MONITORING BY INTRODUCING EVIDENCE FOR THE FIRST TIME ON APPEAL.

The Commonwealth argues that it met its burden of proving the reasonableness of GPS monitoring as a condition of the defendant's probation because the victim "was geographically proximate to the defendant and an exclusion zone of a 1/2 mile around her home address was entered into the ELMO system."¹ (Comm. Br. 19). The Commonwealth did not introduce this evidence at the motion hearing. To the contrary, the Commonwealth acknowledged that it did not know the victim's home address. (Mot. Hrg. 6). The Commonwealth now seeks to introduce evidence regarding the victim's address and the input of an exclusion zone into the ELMO system by filing a motion to expand the record in this Court. The defendant has opposed this motion. Regardless of whether the Commonwealth's motion is allowed or not, the Commonwealth cannot satisfy its burden of proving the reasonableness of GPS monitoring by relying on evidence that it seeks to introduce for the first time on appeal. Just as a party cannot

¹ The Commonwealth's brief will be cited by page number as (Comm. Br. _).

prevail by presenting a new legal argument for the first time on appeal, it cannot prevail by presenting new evidence for the first time on appeal. See *Commonwealth v. Barbosa*, 463 Mass. 116, 124 n.3 (2012) (“We generally decline to consider arguments raised for the first time on appeal”).

II. THE COMMONWEALTH’S ARGUMENT THAT EVIDENCE OF THE DEFENDANT’S RISK OF RECIDIVISM IS UNNECESSARY CONTRADICTS THE SJC’S DECISION IN *FELIZ*.

The Commonwealth next argues that GPS monitoring is reasonable because it offers protection to the victim regardless of whether there is evidence that the defendant will reoffend. (Comm. Br. 22). This argument cuts against the SJC’s conclusion in *Commonwealth v. Feliz*, 481 Mass. 689 (2019). In *Feliz*, the SJC focused on the defendant’s risk of reoffending in analyzing whether GPS monitoring was reasonable. 481 Mass. at 706-709. The Court ultimately concluded that “[t]he absence of evidence demonstrating a risk of recidivism anchored in facts related to this particular defendant tilts the balance against concluding that GPS monitoring is a reasonable search.” *Id.* at 709.

There is no question that GPS monitoring can provide a sense of safety to the victim. However, the

need to provide this sense of safety ultimately depends on the defendant's risk of recidivism. If the Commonwealth fails to introduce evidence indicating that the defendant will reoffend, then GPS monitoring cannot be deemed reasonable. *Feliz*, 481 Mass. 706-709. The need to protect the victim from the defendant cannot render GPS monitoring reasonable if there is scant evidence that the defendant will reoffend.

III. THE COMMONWEALTH FAILS TO PROVIDE ANY EXPLANATION AS TO WHY THE UNDERLYING FACTS OF THE DEFENDANT'S OFFENSE INDICATE THAT HE POSES A RISK TO REOFFEND.

The Commonwealth asserts that the underlying facts of the defendant's offense demonstrate that he poses a "risk of violating a condition of his probation." (Comm. Br. 25). Yet the Commonwealth proffers no explanation as to why this assertion is accurate. (Comm. Br. 24-25). The Commonwealth describes the underlying facts but fails to link any of these facts to the defendant's risk of reoffending or otherwise violating his probation. (Comm. Br. 24-26). This is precisely the type of hollow justification for GPS monitoring that the Court should reject.

As the defendant acknowledged in his initial brief, the underlying facts of the offense can support

the imposition of GPS monitoring if they logically speak to an increased risk of recidivism. See *Commonwealth v. Meyer*, 100 Mass. App. Ct. 1127 (Mar. 14, 2022) (unpublished decision) (GPS monitoring reasonable where defendant repeatedly raped biological daughter on an almost daily basis for two and a half years and evidence suggested that he had targeted victim's younger sister for similar abuse); *Commonwealth v. Torres*, 99 Mass. App. Ct. 1117 (Mar. 30, 2021) (unpublished decision) (GPS monitoring reasonable because defendant had history of committing sexual offenses); see also *Commonwealth v. Johnson*, 481 Mass. 710, 719-720 (2019) (GPS monitoring reasonable "in light of the defendant's extensive criminal history and willingness to recidivate while on probation").² However, the underlying facts cannot support the imposition of GPS monitoring if they provide no basis for concluding that the defendant is a risk to reoffend. That is the situation here. The underlying facts of the defendant's offense do not speak to his risk of reoffending. The Commonwealth may

² Copies of the unpublished decisions are included in the addendum to this brief.

insist otherwise but it has failed to provide any explanation to support this assertion.

IV. THE DEFENDANT IS NOT ARGUING THAT SORB'S CLASSIFICATION OF THE DEFENDANT CANNOT BE CONSIDERED IN THE REASONABLENESS ASSESSMENT.

The Commonwealth asserts that "[i]t would be absurd to prevent a judge, who may be tasked with assessing a sex offender's risk of re-offense, from relying on a determination made by the state agency with the expertise in such evaluations." (Comm. Br. 29). The defendant agrees with this assertion. The defendant fully acknowledges that SORB's classification of the defendant as a level two sex offender is a relevant factor in the reasonableness determination. However, this factor alone cannot carry the day for the Commonwealth. See *Feliz*, 481 Mass. at 701, quoting *Grady v. North Carolina*, 135 S. Ct. 1368, 1370 (2015) ("Because reasonableness depends 'on the totality of the circumstances,' no one factor will be dispositive in every case.").

V. GPS MONITORING CREATES A FAR MORE SIGNIFICANT INTRUSION ON PERSONAL PRIVACY THAN SORB'S PUBLIC POSTING OF INFORMATION ABOUT SEX OFFENDERS.

The Commonwealth argues that GPS monitoring is merely a slight imposition on the defendant's privacy because information about him is already publicly

available due to his classification as a level two sex offender. (Comm. Br. 32-33). In support of this position, the Commonwealth relies on the Seventh Circuit's decision in *Belleau v. Wall*, 811 F.3d 929 (7th Cir. 2016). In *Belleau*, the court concluded that the statutory imposition of GPS monitoring on the plaintiff, a repeat sex offender, was reasonable and thus did not violate the Fourth Amendment. 811 F.3d at 930-937. In reaching this conclusion, the court reasoned that the intrusion on the plaintiff's privacy was "slight given the decision by Wisconsin . . . to make sex offenders' criminal records and home addressees public." *Id.* at 935. In essence, the court concluded that GPS monitoring is only slightly more intrusive than a statutory requirement that makes information about sex offenders publicly available. *Id.*

The Court should reject this rationale. Contrary to the decision in *Belleau*, wearing a GPS ankle bracelet is significantly more intrusive than having your biographical information and criminal history made publicly available. An individual subject to GPS monitoring must wear the ankle bracelet throughout the course of their day. While being worn, the bracelet

amasses "a substantial quantum of intimate information about a person." *Feliz*, 481 Mass. at 704, quoting *United States v. Jones*, 565 U.S. 400, 416 (2012). A sex offender loses some privacy by having their biographical information and criminal history made publicly available; they lose far more privacy when subjected to GPS monitoring.

Respectfully Submitted,
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NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1336

COMMONWEALTH

vs.

DWIGHT D. MEYER.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

In 2012, the defendant, Dwight D. Meyer, pleaded guilty to four counts of rape of a child, three counts of rape, one count of incest, and eleven counts of indecent assault and battery on a child over the age of fourteen. He received a sentence of committed time and probation. As a condition of his probation the defendant was required to be monitored by a global positioning system (GPS). In 2020, the defendant filed a pro se motion to amend or vacate special conditions of probation, specifically to remove the GPS requirement. Following a hearing, the defendant's motion was denied and his subsequent motion to reconsider was also denied. The defendant now appeals the denial of the motion to amend or vacate and the motion to reconsider, arguing that the judge erred in denying his motion to amend or vacate where the judge did not make an

individualized determination of reasonableness, pursuant to Commonwealth v. Feliz, 481 Mass. 689 (2019), before authorizing the GPS monitoring. We affirm.

Discussion. 1. Standard of review. Generally, we review a judge's decision on a motion to modify the conditions of probation for an abuse of discretion. See Commonwealth v. Morales, 70 Mass. App. Ct. 839, 842, 846 (2007). "Just as judges have considerable discretion at sentencing in establishing the terms of probation, they also have the discretion to modify those conditions 'as a proper regard for the welfare, not only of the defendant but of the community may require.'" Commonwealth v. Goodwin, 458 Mass. 11, 16 (2010), quoting Buckley v. Quincy Div. of Dist. Court Dep't, 395 Mass. 815, 818 (1985). However, where, as here, the judge's denial of the defendant's motion was based on a constitutional determination -- that the imposition of GPS monitoring was a reasonable search under art. 14 -- we "review independently the motion judge's application of constitutional principles." Commonwealth v. Moore, 473 Mass. 481, 484 (2016), quoting Commonwealth v. Franklin, 456 Mass. 818, 820 (2010).

2. GPS monitoring. Relying upon Feliz, supra, the defendant requests that we vacate the imposition of the GPS

monitoring as a condition of his probation.¹ The initial condition of GPS monitoring was ordered in accordance with G. L. c. 265, § 47, which required GPS monitoring for defendants on probation who had been convicted of certain sex offenses, including the offense for which the defendant was convicted. In 2019, the Supreme Judicial Court in Feliz held, based on art. 14 of the Massachusetts Declaration of Rights, that before imposing GPS monitoring under G. L. c. 265, § 47, a judge must make an "individualized determination of reasonableness." Feliz, 481 Mass. at 690-691. "In making this determination, courts must balance 'the Commonwealth's need to impose GPS monitoring against the privacy invasion occasioned by such monitoring.'" Commonwealth v. Johnson, 481 Mass. 710, 719 (2019), quoting Feliz, supra at 691.

Here, in light of Feliz, the defendant filed a pro se motion to vacate or amend the GPS requirement. After conducting a hearing, the judge denied the motion based on the particular facts relating to the defendant and the underlying offenses. In

¹ The defendant also seeks a ruling by this court that the holding in Feliz must be applied retroactively. He contends that because Feliz addresses a constitutional determination prohibiting a certain category of punishment for a class of defendants based on their status or offense it must be given retroactive application. However, in light of the fact that the defendant received a hearing to determine whether the imposition of the GPS was particularized to him, we need not make such a ruling here.

support of their opposition, the Commonwealth presented the judge with the facts relating to the charges to which the defendant pleaded guilty which included: that the defendant had raped his biological daughter on almost a daily basis beginning when she was approximately thirteen and one-half years old and continuing over the course of two and one-half years; the defendant threatened to kill the victim and himself if she ever told anyone²; the victim warned her younger sister about the sexual assaults when she reached the same age the victim was when the abuse began; the victim's younger sister told her that the defendant was leaving out pornography for her to see; when the victim asked the defendant not to hurt her younger sister the defendant laughed and asked, "[W]hy it wasn't so bad for you, was it?" The judge specifically found, "[g]iven the facts and circumstances of this case, GPS monitoring is necessary to ensure that the defendant does not contact the victim and refrains from unsupervised contact with other children." In light of the fact that the defendant's criminal convictions were all contact offenses involving his biological daughter, that he had exposed the victim's younger sister to pornography, and the

² The victim informed the police that the defendant always carried a handgun and had other guns in a safe. During a subsequent search of the defendant's residence, the police recovered seventeen firearms, ammunition, and a Rambo 3 Bowie knife. (RA 96, 111)

fact that he is generally aware of where the victim lives,³ the Commonwealth's interest in imposing GPS monitoring on this defendant persists and outweighs the privacy intrusion occasioned by the probationary condition. See Johnson, 481 Mass. at 719-720. Contrast Feliz, 481 Mass. at 707-709. Accordingly, the defendant's particular circumstances rendered the imposition of GPS monitoring as a condition of his probation reasonable.⁴

The defendant also argues that the judge erred in making a final determination on his motion to vacate or amend the probation requirement of GPS monitoring under Feliz, where the defendant informed the court at the end of the hearing, that he had petitioned for CPCS representation but had not received a response. However, where, as here, the defendant did not file a request with the court seeking the appointment of an attorney, did not object to proceeding pro se with the hearing on his motion, and did not raise the issue of representation in his motion to reconsider, the issue is waived. See Commonwealth v.

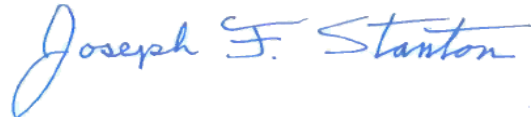
³ The defendant testified as to the general area where he asserts the victim lives.

⁴ The defendant pursues no specific argument on appeal regarding the denial of his motion to reconsider.

Cote, 386 Mass. 354, 358 n.6 (1982) (issue not raised below is waived on appeal).

Orders denying motion to
amend or vacate special
probation condition and
motion to reconsider,
affirmed.

By the Court (Milkey,
Desmond & Lemire, JJ.⁵),



Clerk

Entered: March 14, 2022.

⁵ The panelists are listed in order of seniority.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-63

COMMONWEALTH

vs.

JULIO TORRES

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant appeals from the denial of his motion to modify the conditions of his probation. On appeal, he contends that the condition of his probation requiring him to wear a global positioning system (GPS) device constitutes an unreasonable search, pursuant to Commonwealth v. Feliz, 481 Mass. 689 (2019), and thus the motion judge erred in denying his motion. We affirm.

Background. On October 13, 2000, the defendant pleaded guilty to four counts of rape and one count of indecent assault and battery on a person over the age of fourteen. On the first three rape convictions, the defendant received three concurrent sentences of seven years to seven years and one day commitment to State prison. On the fourth rape conviction and the indecent assault and battery conviction, the defendant was sentenced to

five years of probation, to run concurrently from and after his prison sentence.¹

The defendant was released from prison on July 12, 2006. On November 28, 2006, he stipulated to violating the terms and conditions of his probation by committing a new criminal offense, specifically, for failing to register as a sex offender. On this date, the judge found the defendant in violation but at the request of the probation officer continued the defendant's probation to its original date with the same terms and conditions. On December 13, 2007, the defendant again stipulated to violating his probation by again failing to register as a sex offender. This time, the court having found the defendant in violation, imposed GPS monitoring as an additional condition of the defendant's probation, and again at the request of the defendant's probation officer, continued his probation to its original date.

On April 10, 2008, the supervision of the defendant's probation was allowed to be transferred from the Suffolk County Superior Court to the Worcester County Superior Court. On January 26, 2009, the defendant was charged with assault with intent to rape a child in the Worcester Division of the District

¹ As conditions of his probation, the defendant was ordered to stay away from the victim, with no direct or indirect contact, and was also ordered to undergo sex offender treatment.

Court Department.² The charge was subsequently reduced to annoying and accosting a person of the opposite sex. Following a jury-waived trial on September 3, 2009, the defendant was convicted of that charge and sentenced to six months in the house of correction. On the same date, the defendant stipulated to violating his probation, and as a result, his probation was revoked for the indecent assault and battery conviction, and he was sentenced to one and one-half to two years in prison. Additionally, on his fourth rape conviction, the defendant was reprobated for five years to be served "on and after" his term of commitment. Again, GPS monitoring remained a condition of the defendant's probation.

In 2012, prior to the defendant's release from prison, he was civilly committed as a sexually dangerous person to the Massachusetts Treatment Center, pursuant to G. L. c. 123A. In January 2017, the defendant was released from civil commitment, and his probation, including the condition of GPS monitoring, commenced at that time.

On June 15, 2018, the defendant filed a motion to modify the terms of his probation, seeking to have the condition of GPS

² The facts which formed the basis for that charge include that the defendant grabbed the wrist of an eleven year old girl, who was at the defendant's home visiting his stepson, and he attempted to pull her into a bedroom, stating that he wanted to "fuck." The victim was able to escape the defendant's grasp and go into another room in the home.

monitoring removed. He argued that the purposes of GPS monitoring had been met, and that removal "best serve[d] the ends of justice." Following a hearing on August 27, 2018, his motion was denied. On June 26, 2019, the defendant moved again to modify the terms of his probation, arguing that, in light of a recent decision, Feliz, 481 Mass. at 691, the condition of his probation requiring him to wear a GPS device constituted an unreasonable search.

Following a hearing, the motion judge conducted an analysis, pursuant to Feliz, supra, to determine the reasonableness of the imposition of GPS monitoring as it pertained to the defendant. The judge balanced the Commonwealth's interest in requesting the GPS condition against the invasion of the defendant's privacy by its imposition. The judge concluded that "the Commonwealth's particularized reasons for imposing GPS monitoring outweigh the defendant's Article 14 rights," and determined that the condition was reasonable.³ The judge denied the defendant's motion. This appeal followed.

³ The Commonwealth's reasons for imposing the condition included protection of the public and deterrence of future offenses as the defendant had a history of sexual violence, had violated his probation on several occasions, and had been classified by the Sex Offender Registry Board as a level three sex offender, a level considered to pose the highest risk of reoffending while in the community.

Discussion. 1. Standard of review. Generally, we review a judge's decision on a motion to modify the conditions of probation for an abuse of discretion. See Commonwealth v. Morales, 70 Mass. App. Ct. 839, 842, 846 (2007). "Just as judges have considerable discretion at sentencing in establishing the terms of probation, they also have the discretion to modify those conditions 'as a proper regard for the welfare, not only of the defendant but of the community' may require." Commonwealth v. Goodwin, 458 Mass. 11, 17 (2010), quoting Buckley v. Quincy Div. of Dist. Court Dep't, 395 Mass. 815, 818 (1985). However, where, as here, the judge's denial of the defendant's motion was based on a constitutional determination -- that the imposition of GPS monitoring was a reasonable search under art. 14 -- we "review independently the motion judge's application of constitutional principles." Commonwealth v. Moore, 473 Mass. 481, 484 (2016), quoting Commonwealth v. Franklin, 456 Mass. 818, 820 (2010). Compare Commonwealth v. Tucceri, 412 Mass. 401, 409 (1992) (although typically reviewed under discretionary standard, "[i]f a new trial claim is constitutionally based, [appellate] court will exercise its own judgment on the ultimate factual as well as legal conclusions").

2. Reasonableness of GPS monitoring. In Feliz, the Supreme Judicial Court held that GPS monitoring as a condition

of probation constitutes a search under art. 14, and accordingly, an individualized determination of the search's reasonableness is required.⁴ See Feliz, 481 Mass. at 699-700. In determining whether the imposition of GPS monitoring as a condition of probation is reasonable, "we consider the extent to which GPS monitoring of [the] particular defendant advances the Commonwealth's interests in rehabilitation of the probationer and protection of the public, and the extent of the incremental privacy intrusion occasioned by GPS monitoring on the defendant's diminished, but still extant, expectations of privacy as a probationer." Id. at 701.

"[R]easonableness depends 'on the totality of the circumstances.'" Id. at 701, quoting Grady v. North Carolina, 575 U.S. 306, 310 (2015). Whether the government's interest in imposing GPS monitoring outweighs the defendant's privacy interests will depend on a "'constellation of factors,' including, among others, the intrusiveness of the search; the

⁴ Prior to Feliz, under G. L. c. 265, § 47, any person who was placed on probation for an enumerated sex offense was required to wear a GPS device as a condition of that probation. The defendant was one such person. In Feliz, however, the Supreme Judicial Court concluded that G. L. c. 265, § 47, was "overinclusive in that GPS monitoring [would] not necessarily constitute a reasonable search for all individuals convicted of a qualifying sex offense." 481 Mass. at 690. It held that, absent individualized determinations of reasonableness, the "[m]andatory, blanket imposition of GPS monitoring on probationers" was unconstitutional. Id. at 700.

defendant's particular circumstances, such as his or her criminal convictions, past probation violations, or risk of recidivism; and the probationary purposes, if any, for which the monitoring was imposed." Commonwealth v. Johnson, 481 Mass. 710, 719 (2019), quoting Feliz, 481 Mass. at 701. No single factor is dispositive. Id.

To begin, the government has a "strong interest in protecting the public from sex offenders." Feliz, 481 Mass. at 705. The defendant was classified by the Sex Offender Registry Board as a level three sex offender, meaning that he was considered to pose the highest risk of reoffending and a concomitant danger to the public. See id. at 707 (discussing cases where GPS monitoring deemed reasonable where individual "assigned to the 'most severe' risk assessment tier"). Moreover, the defendant was convicted of four counts of rape and one count of indecent assault and battery, and while on probation for those offenses, the defendant committed several additional offenses. The defendant violated the conditions of his probation three times -- twice for failing to register as a sex offender,⁵ and the third time, while the defendant was being

⁵ "The purpose of the sex offender registration statute is to protect the vulnerable members of our communities from sexual offenders, and from the danger of recidivism posed by sex offenders" (citations and quotations omitted). Doe, Sex Offender Registry Bd. No. 7083 v. Sex Offender Registry Bd., 472 Mass. 475, 481 (2015).

monitored by a GPS device, he was charged with assault with intent to rape a child: a new contact offense. As stated supra, the charge was reduced, and the defendant was convicted of annoying and accosting a person of the opposite sex. See Johnson, 481 Mass. at 719 (defendant's criminal convictions and past probation violations justified imposition of GPS monitoring).

The defendant however argues that these factors are insufficient to render the imposition of GPS monitoring reasonable because, since the condition first was imposed, he has participated in sex offender treatment, he has not committed any new offenses, and several doctors have opined that, as of 2016, he is no longer a sexually dangerous person.⁶ He argues that, for these reasons, the Commonwealth's interest in monitoring his location is diminished and can no longer justify the intrusion on his privacy. We are not persuaded. The defendant, at the time of the motion, had spent the bulk of his time confined and only had been released from civil commitment for a period of two years. Moreover, as a probationer, the defendant's expectation of privacy is diminished. See Johnson,

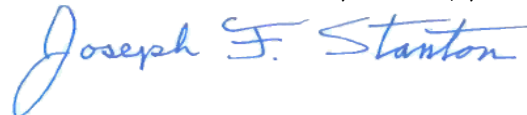
⁶ It is important to note that each doctor, in reaching their conclusion that the defendant was no longer a sexually dangerous person as of 2016, considered that the defendant would be under the supervision of probation for five years following his release from civil commitment. A condition of that probation included GPS monitoring.

481 Mass. at 720 n.6. As such, weighed against the Commonwealth's interest in protecting the public, as well as its significant interest in "deterring the probationer from engaging in criminal activity and detecting such criminal activity if it occurs," see id. at 719, the burden on the defendant's privacy effected by the GPS device is not so significant to render the condition unreasonable.⁷

In light of the defendant's criminal convictions which were all contact offenses, his numerous violations of probation, his risk of reoffending, and the limited period of time that he has been released from civil commitment, the Commonwealth's interest in imposing GPS monitoring on this defendant persists and outweighs the privacy intrusion occasioned by the condition. See Johnson, 481 Mass. at 720. Cf. Feliz, 481 Mass. at 705-706. The denial of the defendant's motion to modify the conditions of his probation is therefore affirmed.

So ordered.

By the Court (Wolohojian,
Desmond & Grant, JJ.⁸),



Clerk

Entered: March 30, 2021.

⁷ This is especially true where the defendant has repeatedly violated the less intrusive condition of his probation requiring him to register as a sex offender.

⁸ The panelists are listed in order of seniority.

CERTIFICATE OF SERVICE

I hereby certify, under the pains and penalties of perjury, that I have served a copy of the defendant's reply brief to Assistant District Attorney Johanna Black, Plymouth County District Attorney's Office, 166 Main Street, Brockton, MA 02301. I have made service via email.

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CERTIFICATE OF COMPLIANCE

I, Edward Crane, hereby certify, that this brief complies with all applicable rules of court pertaining to the filing of briefs. This brief was written using Courier New font in 12-point size with 10 characters per inch. There are 7 non-excluded pages that count towards the 20-page limit imposed by Mass. R. App. Pro. 20(a)(2)(B).

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