

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

21-P-688

COMMONWEALTH

vs.

ROBERT A. HADLEY, JR.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Passing on the question whether completion of the defendant's probation renders moot his challenge to the requirement that he be monitored by a global positioning system (GPS) device as a condition of his probation, we are satisfied that the plea judge conducted a particularized consideration of the need for that requirement, and that she did not abuse her discretion in concluding that it was warranted. See Commonwealth v. Feliz, 481 Mass. 689, 690-691 (2019). We accordingly affirm the judgment imposing GPS monitoring among the conditions of the defendant's probation, and the order denying the defendant's motion to revise and revoke his sentence.

As the defendant correctly observes in his brief, "[a]rticle 14 [of the Massachusetts Declaration of Rights]

requires an individualized determination of reasonableness in order to conduct more than minimally invasive searches, and GPS monitoring is not a minimally invasive search."

The parties' filings incident to the sentencing hearing, combined with the transcript of the sentencing hearing itself, make plain that the plea judge fully engaged the question of the reasonableness of the GPS requirement as a condition of the defendant's probation. The parties presented to the judge a sentencing recommendation that was agreed on in all respects except for (1) the GPS requirement and (2) an additional requirement that the defendant register as a sex offender, which the defendant no longer challenges. The defendant's counsel advised the plea judge that he had filed a written memorandum challenging the imposition of the GPS requirement. During the sentencing hearing, the defendant's counsel presented extensive and detailed argument concerning the GPS requirement, based on Feliz, immediately following the conclusion of which the plea judge announced her decision to impose the requirement. In the circumstances, it is plain that the judge considered the Feliz requirements, and conducted the required balancing, albeit implicitly, in imposing the GPS requirement as a condition of the defendant's probation.¹

¹ In any event, the same judge subsequently provided a specific written finding explaining her reasoning, in her order denying

The defendant's challenge to the merits of the GPS requirement fares no better. The defendant's exploitation of a young victim warranted imposition of conditions to ensure that he would observe the order to refrain from contact with the victim, particularly in light of the defendant's admitted drinking problem. We discern no abuse of discretion, see Commonwealth v. Eldred, 480 Mass. 90, 98 (2018), in the judge's conclusion that the imposition of the GPS requirement was reasonable, and that the degree of its intrusion on the defendant's privacy interest did not outweigh the public interest in preventing the defendant from having any contact with the victim during the probationary period.

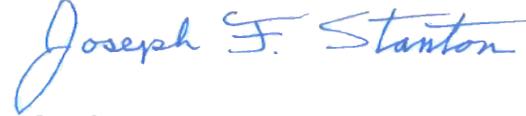
The judgment imposing GPS monitoring among the conditions of the defendant's probation, and the order denying the

the defendant's motion to revise and revoke his sentence. To the extent the defendant's appeal is not moot, it would elevate form over substance to invalidate the judgment imposing the GPS requirement because the judge did not commit her explanation to writing until that subsequent event.

defendant's motion to revise and revoke his sentence, are affirmed.

So ordered.

By the Court (Green, C.J.,
Henry & Englander, JJ.²),



Clerk

Entered: November 4, 2022.

² The panelists are listed in order of seniority.