

COMMONWEALTH OF MASSACHUSETTS

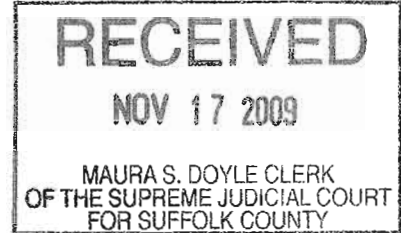
MIDDLESEX, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
DOCKET NO. 2009-0599

COMMONWEALTH

v.

RALPH GOODWIN



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COMMONWEALTH'S PETITION FOR EXTRAORDINARY RELIEF  
PURSUANT TO G.L. c. 211, § 3

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Now comes the Commonwealth and respectfully asks this Honorable Court to grant relief pursuant to its general superintendence powers under G.L. c. 211, § 3 from an order issued by the Superior Court, Justice Kathe M. Tuttmann, on October 9, 2009, in which she determined that she was without authority to impose a global positioning system (GPS) monitoring device as an additional condition of probation in a probation modification proceeding. (Attachment A).

As reasons for its petition, the Commonwealth asserts that a judge does have the discretion to impose a GPS monitoring device pursuant to G.L. c. 276, § 87 on an individual basis upon finding that modification of probation conditions is warranted. As the judge in the instant case determined that modification of the conditions

of the defendant's probation was appropriate, however incorrectly determined that the holding of Commonwealth v. Cory, 454 Mass. 559 (2009), prohibited her from considering the addition of GPS monitoring, the Commonwealth asks this Court to remand the case to the motion judge so she can exercise her discretionary authority pursuant to G.L. c. 276, § 87 and determine if GPS monitoring should be included in her modification order. See Commonwealth v. Pelletier, 449 Mass. 392, 395 (2007) (G.L. c. 211, § 3 is the proper vehicle for the Commonwealth to seek review of the sentencing judge's actions). See also Buckley v. Quincy Div. of Dist. Court Dept., 395 Mass. 815, 815 (1985) (challenge to modification of conditions of probation addressed through G.L. c. 211, § 3 petition).

#### BACKGROUND<sup>1</sup>

On September 28, 1990, the defendant was convicted of three counts of rape of a child by force and one count of kidnapping. He was sentenced to concurrent terms of nine to ten years and ten to fifteen years in state prison, and a term of thirty to forty years in state prison suspended for ten years from and after with a special probationary

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<sup>1</sup> Unless otherwise indicated, the following facts are taken directly from the findings of fact by the motion judge in support of her Memorandum and Order on the Commonwealth's Motion to Reconsider the Imposition of GPS Monitoring and Exclusion Zones As A Condition of the Defendant's Probation.

condition requiring him to undergo psychiatric counseling as directed by the Probation Department. In affirming one of the convictions on appeal, the Supreme Judicial Court set forth the following facts as the basis of the defendant's convictions:

The defendant had taken the victim, a seven year old boy, away from a social function the victim was attending with his parents by threatening to kill the victim if he refused to go along. The defendant first took the victim to an area underneath a bridge where an act of fellatio occurred. The defendant then brought the victim to the cellar of his (the defendant's) parents' house where other acts of fellatio were performed, and the defendant attempted to sodomize the victim. The victim was confined in the cellar overnight. The next morning the defendant committed an additional act of fellatio, after which the defendant surreptitiously removed the victim from the house in a large cardboard box and sent him home in a taxicab.

Commonwealth v. Goodwin, 414 Mass. 88, 89, 95 (1993).

In 2005, the defendant was found to be a sexually dangerous person and committed to the Massachusetts Treatment Center at Bridgewater. In 2009, a jury found the defendant no longer sexually dangerous pursuant to G.L. c. 123A, § 9 and the defendant was discharged to his probationary sentence on June 9, 2009.

The Probation Department brought the case forward and asked for modification of the conditions of the defendant's probation, including the imposition of a GPS monitoring

device with exclusionary zones. Another judge added conditions prohibiting the defendant from having contact with children age 16 and under, or with the victim/witness in this case, and continued the matter for further hearing regarding the possible imposition of a GPS device.

After a hearing on August 12, 2009, the instant judge imposed additional conditions requiring the defendant to remain under the supervision of the Department of Mental Health ("DMH") and to comply with his DMH treatment plan, including taking all prescribed medications and to execute waivers to enable the Probation Department to share information with the DMH. The judge, citing Commonwealth v. Morales, 70 Mass. App. Ct. 839, 843-844 (2007), noted her authority to modify probationary conditions when necessary for the welfare of the defendant or the community, "as long as the modifications did not constitute punishment." She then concluded that because the Supreme Judicial Court in Cory stated that the mandatory imposition of GPS monitoring of a certain class of offenders pursuant to G.L. c. 276, § 47 was punitive in effect, 454 Mass. at 572, she had no authority to add GPS monitoring as a condition of probation in a modification proceeding.

On August 28, 2009, the Commonwealth sought reconsideration of the judge's decision. (Attachment B).

On September 8, 2009, the defendant filed an opposition to the Commonwealth's motion. (Attachment C). On October 9, 2009, the judge issued a written memorandum and order denying the Commonwealth's motion to reconsider (Attachment A), and the Commonwealth now pursues this petition for relief pursuant to G.L. c. 211, § 3.

#### ARGUMENT

THE SUPREME JUDICIAL COURT'S DECLARATION THAT THE MANDATORY IMPOSITION OF GPS MONITORING OF A CERTAIN CLASS OF OFFENDERS PURSUANT TO G.L. c. 276, § 47 IS PUNITIVE IN EFFECT DOES NOT RENDER THE DISCRETIONARY IMPOSITION OF GPS MONITORING PURSUANT TO G.L. c. 276, § 87 IN AN INDIVIDUAL CASE PUNISHMENT

The motion judge incorrectly determined that because the Supreme Judicial Court held that the mandatory imposition of GPS monitoring pursuant to G.L. c. 276, § 47 was punitive in effect, that adding this condition to the defendant's probation pursuant to her authority under G.L. c. 276, § 87<sup>2</sup> was prohibited by Commonwealth v. Morales. 70 Mass. App. Ct. 839, 843 (2007) (court authorized to modify conditions of probation by adding reasonable restrictions consistent with the underlying basis for the modification, so long as the modification does not constitute punishment).

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<sup>2</sup> General Laws c. 276, section 87 reads, in pertinent part: "The superior court. . . may place on probation in the care of its probation officer any person before it charged with an offense or a crime for such time and upon such conditions as it deems proper. . . in any case after a finding or verdict of guilty. . . "

This conclusion is incorrect because the SJC did not find that the discretionary imposition of GPS monitoring in an individual case would constitute punishment. Rather, the reason that the SJC held that mandatory imposition of GPS monitoring pursuant to G.L. c. 276, § 47 was punitive in effect was precisely because "it applies without exception to convicted sex offenders sentenced to a probationary term, regardless of any individualized determination of their dangerousness or risk of reoffense." Cory, 454 Mass. at 572.

Throughout the SJC's analysis, the SJC repeatedly focused on the blanket application of the statute in determining that the punitive in effect factors set out in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-169 (1963) were met:

The first and second [factors] ask whether the sanction "comes into play only on a finding of scienter" and "whether the behavior to which it applies is already a crime"--questions that together consider whether the sanction is administered as a criminal penalty, that is, in response to criminal conduct. In imposing GPS monitoring as a mandatory condition of a probationary sentence for convicted sex offenders, § 47 more than meets this standard. The GPS requirement applies only to those persons who commit and are convicted of certain crimes; it applies to every person who is convicted of those crimes and receives a probationary term as part of the criminal proceeding's disposition; and it applies for the precise duration of the probationary sentence imposed. A sanction bearing these qualities, if it also imposes a significant

limitation on liberty, carries a strong presumption of punishment. See *Smith v. Doe*, 538 U.S. at 112 (Stevens, J., dissenting); *id.* at 115-116 (Ginsburg, J., dissenting) (sanctions were punitive where requirements were "comparable to conditions of supervised release or parole," and triggered by past crime alone rather than current dangerousness).

There is no context other than punishment in which the State physically attaches an item to a person, without consent and also without consideration of individual circumstances, that must remain attached for a period of years and may not be tampered with or removed on penalty of imprisonment.

The sanction appears excessive, however, to the extent that it applies without exception to convicted sex offenders sentenced to a probationary term, regardless of any individualized determination of their dangerousness or risk of reoffense. See *Smith v. Doe*, 538 U.S. at 116-117 (Ginsburg, J., dissenting) (sanction excessive in relation to nonpunitive purpose, where keyed to offense rather than offender's particularized risk of reoffense).

Weighing these factors together, we conclude that, as a result of the substantial burden on liberty § 47 imposes as part of the sentence for certain crimes, the statute is punitive in effect.

*Cory*, 454 Mass. at 569-572 (emphasis added). Indeed, the SJC specifically noted that "a judge. . . does not implicate ex post facto provisions by exercising the discretionary power [to impose GPS monitoring as a condition of probation] in an individual case." *Id.* at p. 7, citing *Buckley v.*

Quincy Div. of the Dist. Ct. Dept., 395 Mass. 815, 818

(1985) ("the terms and conditions of probation may be subject to modification from time to time as proper regard for the welfare, not only of the defendant but of the community, may require").

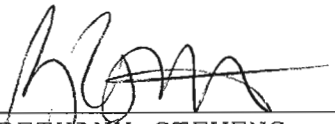
GPS monitoring of this defendant is a reasonable restriction, intended to be preventative in nature, and it is designed to facilitate the successful reintegration of the defendant into the community. Buckley, 395 Mass. at 819 n.5. The information provided to the motion judge, that was unavailable at the time of sentencing, shows an individual that, despite some efforts at rehabilitation, has not completed sex offender treatment and remains a danger to the community. Based on this information the conditions of the defendant's probation were modified to prohibit contact with children age 16 and with the victim/witness in this case. Adding GPS monitoring as a condition is consistent with the underlying basis for the motion judge's sentencing modifications and is a proper modification as it would ensure the defendant's compliance with these stay away conditions and the safety of the community during the defendant's term of probation.

CONCLUSION

For the foregoing reasons, the Commonwealth requests that this Court vacate the trial judge's order in which she declares that she is without authority under G.L. c. 276, § 87 to impose GPS monitoring as a condition of probation in a modification proceeding, and remand the case to the motion judge for an individualized determination as to whether imposing this condition is necessary for the welfare of the defendant or the community. See Morales, 70 Mass. App. Ct. at 843-844 ("where a judge is asked to modify the conditions of probation, the judge retains the discretion to include additional reasonable restrictions consistent with the underlying basis for the modification").

Respectfully Submitted,  
For the Commonwealth,

GERARD T. LEONE, JR.  
DISTRICT ATTORNEY

By:   
BETHANY STEVENS  
ASSISTANT DISTRICT ATTORNEY  
Office of the Middlesex District  
Attorney  
15 Commonwealth Avenue  
Woburn, MA 01801  
Tel: (781) 897-6848  
BBO No. 655366

Dated: November 17, 2009

CERTIFICATE OF SERVICE

I, Bethany Stevens, hereby certify that I have served a true copy of the foregoing Commonwealth's Petition for Extraordinary Relief pursuant to G.L. c. 211, § 3 to Jeannine E. Mercure, counsel for the defendant, on this 17<sup>th</sup> day of November, 2009, by first-class mail.

Signed under the pains and penalties of perjury.



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BETHANY STEVENS  
ASSISTANT DISTRICT ATTORNEY .

# ATTACHMENT A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. MICR-1990-0607

COMMONWEALTH

vs.

RALPH GOODWIN

MEMORANDUM AND ORDER ON COMMONWEALTH'S MOTION TO  
RECONSIDER THE IMPOSITION OF GPS MONITORING AND EXCLUSION ZONES AS A  
CONDITION OF THE DEFENDANT'S PROBATION

On September 28, 1990, the defendant pleaded guilty to three counts of rape of a child by force and one count of kidnapping. He was sentenced to concurrent terms of nine to ten years and ten to fifteen years in state prison, and a term of thirty to forty years in state prison suspended for ten years from and after with a special probationary condition requiring him to undergo psychiatric counseling as directed by the Probation Department.<sup>1</sup> In 2005, on the petition of the Commonwealth pursuant to G. L. c.123A, §12, the defendant was adjudicated a sexually dangerous person and committed to the Massachusetts Treatment Center at Bridgewater. In 2009, a jury found the defendant no longer sexually dangerous pursuant to G. L. c.123A, §9, and he was discharged on June 9, 2009. He is presently serving the probationary term of his original sentence.

Shortly after the defendant was released from custody and began his probationary term, the Probation Department brought his case forward for appointment of counsel and requested that the court impose additional conditions of probation, including a GPS monitoring device with exclusionary zones. Another justice of this court added conditions prohibiting the defendant from having contact with children age 16 and under, or with the victim/witnesses in this case, and continued the matter for further hearing regarding the possible imposition of a GPS device.

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<sup>1</sup> The sentencing Judge, Hon. Patti B. Saris, now sits on the Federal District Court for Massachusetts.

Counsel for the defendant provided the court with several evaluations of the defendant containing detailed information about his present mental and social status. After a hearing on August 19, 2009, I imposed additional conditions requiring the defendant to remain under the supervision of the Department of Mental Health (DMH) and to comply with his DMH treatment plan, including taking all prescribed medications, and to execute waivers to enable the Probation Department to share information with the DMH.<sup>2</sup> Based on the recently decided case of Commonwealth v. Cory, 454 Mass. 559 (2009), holding that G. L. c.265, §47 (requiring certain convicted sex-offender to wear a GPS device as a condition of probation) is punitive, and therefore may not be applied to persons who are placed on probation for qualifying sex offenses committed prior to the statute's effective date, I declined to impose a GPS monitoring device with exclusionary zones as requested.<sup>3</sup> The Commonwealth now seeks reconsideration of that order, contending that this court should exercise its discretion to impose a GPS device based on the circumstances of this case.

It is true, as the Commonwealth points out, that a sentencing judge has discretion to impose a GPS device as a condition of probation for a sex offender who was convicted prior to the effective date of G. L. c.265, §47, where that judge determines, on the facts of a particular case, that a GPS device is an appropriate probationary condition. The exercise of judicial discretion in those circumstances does not implicate *ex post facto* provisions. Cory, 454 Mass. at 572; see also Commonwealth v. Vallejo, SJC-10364 (September 30, 2009). Likewise, a judge has discretion to consider the imposition of a GPS device as a sanction for a violation of probationary conditions where probation is continued or extended. Commonwealth v. Chirillo, 53 Mass. App. Ct. 75, 80 (2001) (judge has authority to modify conditions of probation or extend probationary period after finding a defendant in violation of probation). In the posture of the present case, however, where the defendant has not violated any of the

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<sup>2</sup> A judge has the authority to modify probationary conditions when necessary for the welfare of the defendant or the community, as long as the modification does not constitute punishment. Commonwealth v. Morales, 70 Mass. App. Ct. 839, 843 - 844 (2007).

<sup>3</sup> See transcript of August 19, 2009 hearing (B. Cunha, Court Reporter) for complete ruling regarding conditions imposed.

terms or conditions of his probation, it would be impermissible to add a probationary condition that, as our Supreme Judicial Court has held, amounts to punishment. Cory, supra. The Commonwealth's Motion for Reconsideration is, accordingly, **DENIED**.

So **ORDERED**.

Dated: October 7, 2009

  
Kathe M. Tuttmann  
Justice of the Superior Court

# ATTACHMENT B

MIDDLESEX, SS. COMMONWEALTH OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT INDICTMENT NO. 1990-605-608

COMMONWEALTH

V.

RALPH GOODWIN

COMMONWEALTH'S MOTION TO RECONSIDER THE IMPOSITION OF GPS MONITORING AND EXCLUSION ZONES AS A CONDITION OF THE DEFENDANT'S PROBATION

The Commonwealth hereby requests this Court to reconsider imposing GPS monitoring, and exclusion zones<sup>1</sup>, as a condition of the defendant's probation in the above-referenced case. As reasons therefore, the Commonwealth states that this Court does have the authority to add this condition as the Supreme Judicial Court's holding in Commonwealth v. Cory, SJC-10314 (August 18, 2009), that mandatory imposition of GPS monitoring of a certain class of offenders pursuant to G.L. c. 276, § 47 is punitive in effect, does not render the discretionary imposition of GPS monitoring in an individual case to be considered punishment.

At the hearing to consider modification of the conditions of the defendant's probation, the Court determined that additional probation conditions were warranted but indicated that these additional conditions did not include GPS monitoring. In reaching that conclusion, the Court referenced information in the qualified examiner reports and the level of supervision provided by the Department of Mental Health ("DMH"). The Court ordered the defendant to sign releases enabling the probation department to monitor compliance with his DMH treatment plan. It is vital for probation to monitor the defendant's compliance with mental health treatment.

<sup>1</sup> The Commonwealth requests that the Court impose exclusion zones including the victim's address and any schools, parks and playgrounds located in the cities and towns surrounding the defendant's home.

After hearing, Denied. See Memorandum and Order issued this date. K. G. K. 8/28/09

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Conditions that require the defendant to comply with DMH directives ensure that the defendant is actively working to decrease his own risk of re-offending. However, the documentation provided to the Court from both the defendant and the Commonwealth, paint a picture of an individual who, despite a finding that he is not a sexually dangerous person for commitment purposes, is "grappling with issues relating to why he offended" and "does not have a relapse prevention plan". See attached Report of Qualified Examiner Mark Schaefer, Ph.D. The GPS monitoring system provides a mechanism for probation to monitor the defendant during the inevitable time periods where DMH and his probation officer are simply unable to provide supervision and monitoring. The imposition of the GPS, in addition to the new conditions requiring compliance with DMH, provides probation with the ability to monitor the defendant's compliance during the significant times when his treatment providers are unable to do so.

The Court further determined that it was without the authority to order GPS monitoring. The Court reasoned that because the SJC held that the mandatory imposition of GPS monitoring pursuant to G.L. c. 276, § 47 constituted punishment, that adding this condition to the defendant's probation was prohibited by Commonwealth v. Morales, 70 Mass. App. Ct. 839, 843 (2007) (court authorized to modify conditions of probation by adding reasonable restrictions consistent with the underlying basis for the modification, so long as the modification does not constitute punishment). However, the SJC did not find that the discretionary imposition of GPS monitoring in an individual case would constitute punishment. Rather, the reason that the SJC held that mandatory imposition of GPS monitoring pursuant to G.L. c. 276, § 47 was punishment was precisely because "it applies without exception to convicted sex offenders sentenced to a

probationary term, regardless of any individualized determination of their dangerousness or risk of reoffense.” Cory, slip op. at p. 7.

Throughout the SJC’s analysis, the SJC repeatedly focused on the blanket application of the statute in determining that the punitive in effect factors set out in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-169 (1963) were met:

The first and second [factors] ask whether the sanction “comes into play only on a finding of scienter” and “whether the behavior to which it applies is already a crime”—questions that together consider whether the sanction is administered as a criminal penalty, that is, in response to criminal conduct. **In imposing GPS monitoring as a mandatory condition of a probationary sentence for convicted sex offenders, § 47 more than meets this standard. The GPS requirement applies only to those persons who commit and are convicted of certain crimes; it applies to every person who is convicted of those crimes and receives a probationary term as part of the criminal proceeding’s disposition; and it applies for the precise duration of the probationary sentence imposed. A sanction bearing these qualities, if it also imposes a significant limitation on liberty, carries a strong presumption of punishment. See Smith v. Doe, 538 U.S. at 112 (Stevens, J., dissenting); *id.* at 115-116 (Ginsburg, J., dissenting) (sanctions were punitive where requirements were “comparable to conditions of supervised release or parole,” and triggered by past crime alone rather than current dangerousness).**

...

**There is no context other than punishment in which the State physically attaches an item to a person, without consent and also without consideration of individual circumstances, that must remain attached for a period of years and may not be tampered with or removed on penalty of imprisonment.**

...

**The sanction appears excessive, however, to the extent that it applies without exception to convicted sex offenders sentenced to a probationary term, regardless of any individualized determination of their dangerousness or risk of reoffense. See Smith v. Doe, 538 U.S. at 116-117 (Ginsburg, J., dissenting) (sanction excessive in relation to nonpunitive purpose, where keyed to offense rather than offender’s particularized risk of reoffense).**

...

Weighing these factors together, we conclude that, as a result of the substantial burden on liberty § 47 imposes as part of the sentence for certain crimes, the statute is punitive in effect.

Cory, slip op. at pp. 5-7 (emphasis added). Indeed, the SJC specifically noted that “a judge. . . does not implicate ex post facto provisions by exercising the discretionary power [to impose GPS monitoring as a condition of probation] in an individual case.” Id. at p. 7, citing Buckley v. Quincy Div. of the Dist. Ct. Dept., 395 Mass. 815, 818 (1985) (“the terms and conditions of probation may be subject to modification from time to time as proper regard for the welfare, not only of the defendant but of the community, may require”).

GPS monitoring of this defendant is a reasonable restriction and is intended to be preventative in nature. The information provided to the Court, that was unavailable at the time of sentencing, shows an individual that, despite some efforts at rehabilitation, has not completed sex offender treatment and remains a danger to the community. The imposition of the GPS monitoring system is consistent with the underlying basis for the Court’s sentencing modification. This Court has the authority to add the condition to the defendant’s probation. The GPS is consistent with the underlying basis for the modification, as it designed to facilitate the successful reintegration of the defendant into the community. Buckley, 395 Mass. at 819 n.5. This Court has the authority to add this condition to the defendant’s probation to ensure the safety of the community during the defendant’s term of probation.

CONCLUSION

For these reasons, the Commonwealth respectfully requests that this Honorable Court allow the Commonwealth's Motion to Reconsider the Imposition of GPS Monitoring System.

Respectfully Submitted,  
For the Commonwealth  
GERARD T. LEONE, JR.  
DISTRICT ATTORNEY



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Deborah Bercovitch  
Assistant District Attorney  
15 Commonwealth Avenue  
Woburn, MA 01801  
(781)897-8400

Dated: August 27, 2009

# ATTACHMENT C

## COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT  
LOWELL DIVISION  
INDICTMENT NO. 1990-605-608

COMMONWEALTH

v.

RALPH GOODWIN

DEFENDANT'S OPPOSITION TO COMMONWEALTH'S MOTION  
TO RECONSIDER THE IMPOSITION OF GPS MONITORING  
AND EXCLUSION ZONES AS A CONDITION OF PROBATION

On August 28, 2009 the Commonwealth filed a motion with the Court to reconsider its ruling on August 19, 2009, denying the Commonwealth's request to impose GPS monitoring and exclusion zones as additional conditions of the Defendant's probation.

The Commonwealth argues that Commonwealth v. Cory, SJC-10314 (August 18, 2009) stands for the proposition that the discretionary imposition of GPS monitoring in an individual case is not considered punishment. This argument is, in fact, completely contrary to the holding in Cory. In its extensive discussion of Mendoza-Martinez factors, the Court states "There is no context other than punishment in which the State physically attaches an item to a person, without consent and without consideration of individual circumstances, that must remain attached for a period of year (17) and may not be tampered with or removed on penalty of imprisonment. Such an imposition is a serious affirmative constraint. (18)" Cory, slip op. at p. 6

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In footnote (18), the Court goes on to elaborate on the punitive effect of GPS monitoring. "To the extent that the ankle bracelet portion of the GPS device is potentially visible to the public, it may have the additional punitive effect of exposing the offender to persecution or ostracism, or at least placing the offender in fear of such consequences. Cf. Smith v. Doe, 538 U.S. 84, 115 (2003) (Ginsburg, J., dissenting) (affirmative restraint established by "profound humiliation and community-wide ostracism" of sex offender registry); Note, Who Are the People in your Neighborhood? Due Process, Public Protection, And Sex Offender Notification Laws, 74 N.Y.U.L. Rev. 1451, 1467-1469 (1999) (describing acts of violence against registered sex offenders). Cf. Also N. Hawthorne, The Scarlet Letter 58 (1871) ("Ah, but...let her cover the mark as she will, the pang of it will always be in her heart")"

The Commonwealth further argues that the SJC held that mandatory imposition of GPS monitoring pursuant to G.L. c. 276 §47 was punishment precisely because "it applies without exception to convicted sex offenders sentenced to a probationary term, regardless of any individual determination of their dangerousness or risk of reoffense." Cory, slip op. at p. 7. However, what the Court actually says is that "The sanction appears excessive, however, to the extent that it applies without exception to convicted sex offenders..."

The Commonwealth also appears to be arguing against the


imposition of GPS monitoring on the defendant in this case, because, the defendant has been found not sexually dangerous, which resulted in his release from the Massachusetts Treatment Center.

The Commonwealth's reliance on the final paragraph of the Cory opinion (before the Court's conclusion) and the reference to the discretionary imposition of GPS monitoring is misplaced. The SJC refers to *sentencing judges* (emphasis added) having the discretionary power to impose GPS monitoring as a condition of probation. In this case, they are seeking a modification of the defendant's probationary terms, absent an appropriately filed revise and revoke motion, an allegation of a violation of probation, or a change in circumstances, and not that the GPS monitoring be imposed by the sentencing judge, at the time of sentencing.

Finally, the Commonwealth, in its Motion To Reconsider, has submitted and argued a Report of Qualified Examiner to the Court. This report, and the Commonwealth's references to it are not properly before the Court in the context of a reconsideration of the August 19, 2009 ruling of the court. The report was not part of the Commonwealth's evidence in the underlying hearing, and therefore, not available for consideration here. Notwithstanding the above, the report is also stale, having been prepared on February 23, 2004, and therefore superceded by the reports submitted by the defendant.

For the forgoing reasons, the Commonwealth's Motion to Reconsider should be denied.


Respectfully submitted:  
Ralph Goodwin  
By his Attorney,

  
\_\_\_\_\_  
Jeannine E. Mercure  
BBO# 559323  
1000 Cambridge Street, Suite A  
Cambridge, Massachusetts 02141  
(617) 868-7005

Dated: September 8, 2009

CERTIFICATE OF SERVICE

I, Jeannine E. Mercure, hereby certify and affirm that I have served a true copy of the within Notice of Appeal on the Commonwealth by delivering a copy of same to the Middlesex District Attorneys Office via September, 2009.

  
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Jeannine E. Mercure