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Rachel Ness-Maddox

The Probationer, the Free Man, and the Fourth Amendment: Constitutional Protections for Those Who Have Served Their Sentences and Those Who Have Not*

by Rachel Ness-Maddox

I. INTRODUCTION

In *Park v. State*,[1] the Georgia Supreme Court evaluated whether persons convicted of sexual offenses and subsequently classified as "sexually dangerous predator[s]" may be required to wear Global Positioning System (GPS) tracking devices after serving their full sentences, including fulfilling probation or parole requirements.[2] The court held that, under the Fourth Amendment of the United States Constitution,[3] such a requirement is invalid because it infringes on the right free people have against unreasonable searches and seizures executed by the state—no matter the crimes for which they were convicted or their status as registered sex offenders.[4] However, the court made clear that this holding only applies to individuals who have

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1. 305 Ga. 348 (2019).

2. *Id.* at 348.

3. U.S. CONST. amend. IV.

4. *Park*, 305 Ga. at 360–61. The court held that O.C.G.A. § 42-1-14(e) (2019) was "unconstitutional on its face" because the statute authorized the search of those "no longer serving any part of their sentences in order to find evidence of possible criminal conduct." *Id.*

served their full sentences—nothing in the majority opinion indicated that individuals on probation or parole may not be subjected to long-term (or even lifelong) tracking requirements, and the concurring opinion specifically endorsed that punishment.[5]

The holding in this case is significant for three primary reasons. First, the court ruled that O.C.G.A. § 42-1-14(e)[6] is unconstitutional to the extent that it permits tracking individuals who have already served their sentences.[7] Through this holding, the court drew a line in the sand over which the state cannot step to continue punishing persons who have finished their official sentences, ensuring that even those convicted of the most serious offenses are entitled to constitutional protections. Second, through *Park*, the state of Georgia joined a national discussion of Fourth Amendment protections regarding the long-term GPS tracking of people at various stages of parole, probation, and freedom. Finally, despite these developments, the majority opinion implies,[8] and the concurrence assures, that the General Assembly is welcome to make minor changes to O.C.G.A. § 42-1-14(e) to ensure the constitutionality of what amounts to the same form of punishment under a different name.[9]

II. FACTUAL BACKGROUND

In 2003, a jury convicted Joseph Park of ten counts of sexual crimes—one count of child molestation and several counts of sexually exploiting a minor. He was sentenced to serve eight years of a twelve-year prison sentence and was released from custody in 2011.[10] Following the guidelines in O.C.G.A. § 42-1-14,[11] the Sexual Offender

5. *Id.* at 361 (Blackwell, J., concurring). Justice Blackwell specified that the *Park* decision did not preclude the legislature from requiring "GPS monitoring as a condition of permitting a sexual offender to serve part of a life sentence on probation." *Id.* The concurrence's endorsement of additional probation to accommodate long-term GPS monitoring is especially noteworthy considering Georgia's significant population of parolees and probationers. As of 2016, Georgia already led the nation in the number of citizens under "community supervision," Danielle Kaeble, *Probation and Parole in the United States, 2016*, NATIONAL CRIMINAL JUSTICE, Apr. 2018, at 11 (2016), https://www.bjs.gov/content/pub/pdf/ppus16.pdf, despite being only eighth in overall population. World Population Review, http://worldpopulationreview.com/states/ (last visited March 28, 2020).

6. O.C.G.A. § 42-1-14(e) (2019).

7. *Park*, 305 Ga. at 360.

8. *Id.* at 353.

9. *Id.* at 362 (Blackwell, J., concurring).

10. *Id.* at 348.

11. O.C.G.A. § 42-1-14(a)(1) (2019).

Registration Review Board (SORRB) reviewed Park's case and classified him as a "sexually dangerous predator" under the same statute.[12] Under O.C.G.A. § 42-1-14(e), any convicted person classified as a sexually dangerous predator was required to wear an "electronic monitoring system . . . for the remainder of his or her natural life."[13] Such persons were also required to "pay the cost of such system" while on probation, parole, and after fully serving any sentence.[14]

After receiving his classification, Park requested that SORRB reevaluate his case; SORRB complied but upheld his classification. His failed reevaluation was the first step of several administrative requirements to attempt to upend his classification.[15] Next, in compliance with O.C.G.A. § 42-1-14(c),[16] Park "sought judicial review of the agency decision," claiming that his classification and the accompanying tracking monitor requirement violated his due process rights and constituted ex post facto punishment.[17] The Fulton County Superior Court upheld his classification, so Park made a discretionary appeal to the Georgia Supreme Court, which denied it. The supreme court's denial of his appeal left him to live with the superior court's ruling, and he remained classified as a sexually dangerous predator.[18] From that point forward, Park was "required to wear a GPS monitoring device for the rest of his life."[19]

Park violated his parole later that year and returned to prison. After serving this new sentence, he was released from prison in 2015, and he again registered as a sex offender. In early 2016, police believed that Park tampered with his ankle monitor, and he was arrested and indicted for that offense.[20]

At that point, Park filed a general demurrer and argued that O.C.G.A.§ 42-1-14, the validity of which was necessary for his prosecution for tampering with his ankle monitor, was unconstitutional both in its classification requirements and its requirement that sexually dangerous predators wear GPS devices after serving their sentences. The trial court found the statute constitutional and, in 2017, overruled

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12. *Park*, 305 Ga. at 348–49 (quoting O.C.G.A. § 42-1-14(a)(1)).
13. O.C.G.A. § 42-1-14(e)(3) (2019).
14. *Id.*
15. *Park*, 305 Ga. at 349.
16. O.C.G.A. § 42-1-14(c) (2019).
17. *Park*, 305 Ga. at 349, *see* O.C.G.A. § 42-1-14(c).
18. *Park*, 305 Ga. at 349.
19. *Id.*
20. *Id.* at 349, *see also*, O.C.G.A. § 16-7-29(b)(5) (2019), which illegalized tampering with legally-mandated monitoring devices.

Park's demurrer. The court did grant his certificate of immediate review, however, and the Georgia Supreme Court granted his application for interlocutory appeal to determine the constitutionality of O.C.G.A. § 42-1-14(e).[21]

At that point, Park brought multiple claims against the statute's constitutionality, but the supreme court only addressed its validity under the Fourth Amendment, as his claims regarding due process and ex post facto punishment were barred by res judicata as a result of his other appeals.[22] Based solely on Park's Fourth Amendment claim, the supreme court determined that O.C.G.A. § 42-1-14(e) was facially unconstitutional because its lifelong GPS requirement required a constant, ongoing, unreasonable searches of people like Park who had finished their sentences, including probation and parole.[23]

III. LEGAL BACKGROUND

A. Reasonableness Under the Fourth Amendment and the Parolee & Probationer Exception

The Bill of Rights was ratified in 1791, and the Fourth Amendment of the United States Constitution has famously protected individuals from the State's "unreasonable searches and seizures"[24] since 1961.[25] Since then, a litany of cases and theories have developed around that simple phrase, defining what constitutes an unreasonable search or seizure.

All statutes are presumed constitutional and, "before an Act of the legislature can be declared unconstitutional, the conflict between it and the fundamental law must be clear and palpable."[26] As a result, the law enforcement action in question must qualify as a "search" to merit consideration under the Fourth Amendment.[27]

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21. *Park*, 305 Ga. at 349–50.

22. *Id.* at 350. Future defendants are likely to ask the court to hold the classification "sexually dangerous predator" unconstitutional, as Park himself raised constitutional claims regarding the classification, but the court declined to address that issue due to res judicata. All the issues barred by res judicata had previously been decided against Park. *Id.*

23. *Id.* at 360.

24. U.S. CONST. amend. IV.

25. The Fourth Amendment always applied to the federal government, but it was not extended to state governments until the Supreme Court's decision in *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

26. *Park*, 305 Ga. at 350 (quoting *JIG Real Estate v. Countrywide Home Loans*, 289 Ga. 488, 490 (2011)).

27. *Park*, 305 Ga. at 351.

In 2015, the Supreme Court of the United States held in *Grady v. North Carolina*[28] that GPS tracking systems which individuals are legally required to wear constitute searches of those individuals, no matter what the government's purpose is in collecting the information.[29] The Court did not hold that such searches are inherently unreasonable, but that, like other searches, the reasonableness of tracking monitor searches "depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations."[30]

In 1997, the Court in *Chandler v. Miller*[31] specified that, to be reasonable, most searches require "individualized suspicion of wrongdoing"—the suspicion of a particular person for a particular act, rather than the general idea that someone may have done something warranting a search.[32] Warrantless searches with the intent (or effect) of pursuing criminal activity without any individual suspicion are, as a general rule, unreasonable.[33] Ten years after *Chandler*, the Supreme Court held that the "gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose," meaning that law enforcement officers may not execute suspicionless searches solely on the basis of the seriousness of the potential criminal activity.[34]

Some individuals—specifically parolees and probationers—have a diminished expectation of privacy, and, as a result, are not entitled to the same individualized treatment as other persons.[35] This principal is best articulated in the Supreme Court's 2006 decision in *Samson v. California*,[36] in which the Court held that a condition of a parolee or probationer's release from prison "can so diminish or eliminate a released prisoner's reasonable expectation of privacy that a suspicionless search by a law enforcement officer would not offend the

28. 575 U.S. 306 (2015).

29. *Id.* at 309–10.

30. *Id.* at 310.

31. 520 U.S. 305 (1997).

32. *Id.* at 313.

33. *Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000).

34. *Id.* at 42. The idea of individualized suspicion executes a policy of valuing individuals over the state. This requirement protects individuals at the expense of the state's ability to control crime, whereas approaches less concerned with privacy—such as the hypothetical life-long GPS monitoring of parolees—prioritize state needs over individuals' privacy.

35. *Griffin v. Wisconsin*, 483 U.S. 868, 874–75 (1987).

36. 547 U.S. 843 (2006).

Fourth Amendment."[37] This holding was not without its critics, though. Justice Stevens dissented.[38] Joined by Justice Souter and Justice Breyer, Stevens lamented the loss of privacy citizens would face as a result of the majority's decision.[39] Stevens warned that the majority in *Samson* opened the door for "an unprecedented curtailment of liberty" and that the suspicionless searches sanctioned by the decision were "the very evil the Fourth Amendment was intended to stamp out."[40]

The dissenters' forebodings quickly materialized in *Jones v. State*,[41] in which the Georgia Supreme Court held that suspicionless and warrantless searches of probationers and parolees are acceptable when the individual subjected to the search has notice that he or she is subject to warrantless searches as part of a parole arrangement.[42]

The holding in *Samson* helped develop the concept of probationers as quasi-prisoners, with probation being more of an extension of prison than the halfway point to freedom.[43] As the Court articulated in *Griffin v. Wisconsin*,[44] parolees "do not enjoy 'the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions.'"[45] Following this line of thinking, the Court further held that if there is a state regulation requiring probationers to submit to warrantless searches, the searches conducted via that regulation do not need to be related to the reason for which the individual being searched is on probation.[46]

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37. *Id.* at 847.

38. *Id.* at 857 (Stevens, J., dissenting).

39. *Id.* at 857–58 (Stevens, J., dissenting).

40. *Id.* (Stevens, J., dissenting). The dissent also highlighted the consequences of limiting the expectation of privacy parolees have, arguing that the majority decided "that parolees have no more legitimate an expectation of privacy in their persons than do prisoners." *Id.* at 858. The distance between probationers and prisoners has only become narrower since *Samson* was decided, as the facts behind *Park* illustrate. After Park's initial appeals and before the alleged tampering with the GPS monitor that led to the appeal which is the topic of this article, Park returned to prison, not as the result of an independent crime, but simply as a result of violating his probation. 305 Ga. at 351.

41. 282 Ga. 784 (2007).

42. *Id.* at 787.

43. *Griffin*, 483 U.S. at 874. The Court noted that "[p]robation is simply one point (or, more accurately, one set of points) on a continuum of possible punishments ranging from solitary confinement in the maximum-security facility to a few hours of mandatory community service." *Id.*

44. 483 U.S. 868 (1987).

45. *Id.* at 874 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)).

46. *Griffin*, 483 U.S. at 870–71.

Despite the overall leeway law enforcement officers have in executing searches on probationers and parolees, the procedure behind the searches still must be constitutional—in Georgia, the parolees or probationers being searched remain entitled to prior notice of their potential subjection to such searches.[47] Individuals on probation are not inherently subject to warrantless searches by virtue of their probationer status alone, absent notice of potential searches.[48]

B. The "Special Needs" Exception

Even in the absence of individual suspicion, a search may be reasonable in narrow circumstances when "the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion . . . ."[49] Known as the "special needs" exception, this category of searches may permit suspicionless searches when three requirements are present. First, the special need at hand must be entirely separate from the general interest of law enforcement.[50] Second, the individual privacy issues of those being searched must be minimal, and finally, the governmental interest executed by the intrusion of privacy would be jeopardized if individualized suspicion were required.[51]

In *Griffin*, the Supreme Court of the United States held that, under this scheme, the operation of the probation system itself can qualify as a special need.[52] On appeal below, the Wisconsin Supreme Court established a rule "that any search of a probationer's home by a probation officer satisfies the Fourth Amendment as long as the information possessed by the officer satisfies a federal 'reasonable grounds' standard."[53] The Supreme Court declined to extend the reasonable grounds standard nationwide but upheld the Wisconsin rule because the regulation itself satisfied the Fourth Amendment.[54] The Court specifically noted that probation is itself a punishment, and because many probationers could just as easily be serving more serious sentences with even less privacy (such as prison sentences),

47. *Jones*, 282 Ga. at 787.

48. *Id.* at 787. ("[The defendant's] status as a probationer, standing alone, cannot serve as a substitute for a search warrant."). *Id.* at 788.

49. *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 624 (1989).

50. *Ferguson v. City of Charleston*, 532 U.S. 67, 84 (2001).

51. *Skinner*, 489 U.S. at 624.

52. 483 U.S. at 875.

53. *Id.* at 872.

54. *Id.* at 872–73.

probationers should expect significantly less privacy than other citizens.[55] The Court also considered the practical problems the government faces in enforcing probation programs, emphasizing that "[a] warrant requirement would interfere to an appreciable degree with the probation system . . . ." and that the time taken to obtain a warrant "would reduce the deterrent effect that the possibility of expeditious searches would otherwise create."[56] This reasoning set a standard of prioritizing the structure of the criminal punishment system over the individuals serving in it and supposedly reforming from their criminal ways under it.[57]

C. Other Jurisdictions

States have come to different conclusions regarding the same or similar issues. In 2015, the Michigan Court of Appeals held in *People v. Hallack*[58] that a statute requiring certain sex offenders to wear location tracking devices as part of their lifelong sentences was constitutionally permissible.[59] The court heavily relied on *Grady* and *Samson* and based its decision on the seriousness of crimes of a sexual nature, the state legislature's desire to deter and punish such crimes, and the fact that probationers and parolees have a reduced expectation of privacy.[60] This is exactly the sort of decision the dissenting justices in *Samson* dreaded—the almost complete overhauling of individual rights via the general suspicion of criminal activity to execute law enforcement goals.[61]

The following year, the United States Court of Appeals for the Seventh Circuit in *Balleau v. Wall*[62] analyzed a Wisconsin statute that required sex offenders "released from civil commitment . . . [to] wear a GPS monitoring device [twenty-four] hours a day for the rest of their lives."[63] Unlike the court in *Hallack*, which acknowledged the privacy concerns associated with constant GPS monitoring,[64] the Seventh

55. *Id.* at 874.

56. *Id.* at 876.

57. *See id.* at 878 ("We think that the probation regime would also be unduly disrupted by a requirement of probable cause.") and 880 ("[I]t is the very assumption of the institution of probation that the probationer is in need of rehabilitation . . . .").

58. 310 Mich. App. 555 (2015) (reversed in part on other grounds).

59. *Id.* at 559.

60. *Id.* at 580–81.

61. 547 U.S. at 860–61 (Stevens, J., dissenting).

62. 811 F.3d 929 (2016).

63. *Id.* at 931.

64. *Hallack*, 310 Mich. App. at 581.

Circuit took its understanding of convicted persons' diminished expectation of privacy much further, deciding that the loss of privacy of persons wearing such monitors was "slight" and "incremental."[65] In light of that determination and the perceived societal value of such monitors on convicted sex offenders, the court reversed[66] the district court's holding that the statute was unconstitutional.[67] To the argument that a search warrant should be required to monitor a person's movements via GPS, the court said: "That's absurd."[68]

Conversely, in 2018, the North Carolina Court of Appeals in *State v. Griffin*[69] held that a statute and sentence requiring a defendant to wear a satellite-based monitoring device for thirty years post-conviction[70] violated his Fourth Amendment rights.[71] This was because the same court held in *State v. Grady*,[72] a previous North Carolina case on remand from the Supreme Court, such monitoring devices needed to execute the State's asserted goal of decreasing recidivism rates among sex offenders to satisfy the Fourth Amendment.[73] Without proof from the State "that [satellite-based monitoring] is effective to protect the public from sex offenders," the court reversed the defendant's sentence of wearing such a monitor for thirty years.[74] However, the court appeared unenthusiastic about its decision and emphasized that its

65. *Belleau*, 811 F.3d at 936.

66. *Id.*

67. *Id.* at 931.

68. *Id.* at 936.

69. 818 S.E.2d 336 (N.C. Ct. App. 2018).

70. *Id.* at 337.

71. *Id.* at 342.

72. 817 S.E.2d 18 (N.C. Ct. App. 2018). The 2018 decision was not North Carolina's final order in the *Grady* case; it was heard, modified, and affirmed by the North Carolina Supreme Court in 2019. *State v. Grady*, 831 S.E.2d 542, 572 (N.C. 2019). The 2019 decision is discussed in part V of this Article. The case originally came before the North Carolina Supreme Court in 2014. *State v. Grady*, 367 N.C. 523 (N.C. 2014). That decision was appealed and subsequently decided by the United States Supreme Court in 2015. *Grady*, 575 U.S. 306. It is the same case in which the Supreme Court decided that a GPS monitor is a search of an individual, and the judgment was vacated and the case remanded to the Court of Appeals of North Carolina to determine whether the search of that particular defendant was reasonable. *Id.* at 311. In 2018, that court of appeals held that the state failed to prove that the search was reasonable. *Grady*, 817 S.E.2d at 28. The next year, the state supreme court affirmed that holding and expanded the court of appeals' constitutional analysis to apply to all defendants. *Grady*, 831 S.E.2d at 572.

73. *Griffin*, 818 S.E.2d at 342.

74. *Id.*

prior holding in *Grady* "compel[led]" the reversal of the defendant's sentence.[75]

IV. COURT'S RATIONALE

Federal, national, and Georgia legal history left the Georgia Supreme Court to determine whether individuals who served their full sentences have the same expectation of privacy as other citizens not on parole, regardless of administrative classifications. In *Park*, the court held that requiring people who are no longer in prison, on probation, or on parole to wear and pay for GPS monitors on their persons is a facial violation of the Fourth Amendment, no matter how SORRB classified them.[76]

Though parolees may have a diminished expectation of privacy that would make such searches constitutional for them,[77] the court emphasized that exception is strictly limited to parolees.[78] The parolee exception has "no application" to non-parolees and non-probationers and, thus, no application to O.C.G.A. § 42-1-14(e) to the extent that it requires "[A] lifelong GPS search of individuals, like Park, who *have already served their entire sentences and are no longer on probation or parole*."[79] As a result, the statute was unreasonable absent the special needs exception.[80]

The court further held that the special need exception to the Fourth Amendment does not apply to this situation.[81] In applying both parts of the *Knights* and *Skinner* test, the court determined that O.C.G.A. § 42-1-14(e) failed the first part of the test because the statute did not limit the use of the data to any particular type of crime,[82] which indicated that it was intended for improper general law enforcement purposes.[83] The court emphasized that, even if the statute was enacted with the laudable goal of decreasing recidivism, that objective was insufficiently "divorced from the State's general interest in law enforcement" to satisfy the first part of the test.[84] The statute failed the second part of the test, which requires that "the privacy interests

75. *Id.*
76. 305 Ga. at 360.
77. *Id.* at 354.
78. *Id.*
79. *Id.*
80. *Id.* at 355.
81. *Id.* at 358.
82. *Id.* at 356–57.
83. *Id.*
84. *Id.* at 356 (quoting *Ferguson*, 532 U.S. at 79).

implicated by the search are *minimal* . . . ."[85] Because the statute authorized ongoing searches of individuals who had already served their sentences in their entirety, the privacy interests were "by no means minimal" and "the statute [could] not be classified as a *reasonable* 'special needs' search."[86]

Justice Blackwell wrote a concurrence (joined by Justice Boggs, Justice Bethel, and Judge Padgett) emphasizing an important implication of the majority opinion: if the Georgia legislature so desires, it can "put the same policy into practice" through different administrative and sentencing guidelines.[87] The concurring justices noted that Georgia law already permits sentences of life imprisonment or imprisonment followed by lifelong probation for those convicted of certain sexual offenses.[88] Following this line of logic, the justices specified that nothing in the majority decision questioned the constitutionality of those sentencing guidelines and that, if the legislature so desires, it may simply expand the requirements for other convicted persons.[89] The concurring justices' solution, then, would put individuals in Park's position on parole or in prison for life to make the exact same tracking system constitutionally permissible.[90]

V. IMPLICATIONS

A. Park as a Template for Other Jurisdictions

In March of 2019, just twenty-four days after the *Park* decision was published, the Massachusetts Supreme Court released its decision in *Commonwealth v. Feliz*,[91] with a holding similar to that in North Carolina's *Griffin* case but for reasons opposite of that case and *Hallack*.[92] In *Feliz*, the court acknowledged that probationers have a

85. *Park*, 305 Ga. at 358 (quoting *Chandler*, 520 U.S. at 314) (emphasis in *Park*).

86. *Park*, 305 Ga. at 358. The majority's rigorous application of the Supreme Court's test highlights a strong interest in protecting individual privacy, even (perhaps especially) at the expense of crime prevention and control. As there is no dissenting opinion, it appears safe to say that none of the justices disagree with this application of the test. However, as discussed below in this Article, Justice Blackwell's concurrence notes the legislature's ability to amend the statute to comply with the holding without offering convicted persons any more privacy—and even further limiting their privacy via longer parole and probation requirements. *Id.* at 361 (Blackwell, J., concurring).

87. *Id.* at 361 (Blackwell, J. concurring).

88. *Id.* at 361.

89. *Id.* at 362.

90. *Id.*

91. 119 N.E.3d 700 (Mass. 2019).

92. *Id.* at 711–12.

diminished expectation of privacy compared to other citizens but that the diminished expectation does not extinguish all their Fourth Amendment rights.[93] In light of their remaining rights to privacy, probationers in Massachusetts, under the Massachusetts Declaration of Rights,[94] are still entitled to "individualized determination[s] of reasonableness."[95] This requirement of individualized suspicion supplants the other potential requirement of probationers being subject to the "[m]andatory, blanket imposition of GPS monitoring" the statute in question imposed.[96]

Most recently, in August of 2019, the North Carolina Supreme Court published a decision on the earlier *Grady* case upon which *Griffin* relied.[97] In that decision, the supreme court finalized the rule that convicted individuals who are no longer on probation or parole "and who have not been classified as . . . sexually violent predator[s]" may not be required to submit to lifetime GPS monitoring.[98] In North Carolina, then, there is a new rule that strives to honor both Fourth Amendment rights and administrative classifications intended to protect the public: individuals who have completed their entire sentences and escaped long-term negative classification are free from ongoing punishment, while those catalogued as "predators" have forfeited some of their rights permanently.[99]

B. Future Developments in Fourth Amendment Rights for Convicted Persons

In light of the other cases discussing the same issue, *Park* falls somewhere in the middle of the national spectrum of case law on this topic. The court expressly rejected the reasoning in *Balleau* because, no matter the administrative category into which individuals are placed after serving their sentences, those "who have served the entirety of their criminal sentences do *not* have a diminished expectation of privacy . . . ."[100] As a result, the Georgia Supreme Court was unconvinced that the eventual opportunity to escape GPS monitoring

93. *Id.* at 711.

94. ALM CONST. Pt. 1, Art. XIV.

95. *Feliz*, 119 N.E.3d at 710.

96. *Id.* at 710.

97. *State v. Grady* 831 S.E.2d 542 (N.C. 2019). The relationship between this *Grady* opinion and the 2015 Supreme Court decision on the same case is discussed *supra* note 69.

98. *Id.* at 568–69.

99. *Id.*

100. *Park*, 305 Ga. at 360 n.7.

requirements via reclassification would render reasonable an otherwise unreasonable search.[101]

In comparison to *Balleau*, the holding in *Park* is fairly individualistic in that it protects persons no longer serving their sentences rather than prioritizing the legal system in which they were once involved (as the Supreme Court endorsed in *Griffin*).[102] However, were O.C.G.A. § 42-1-14(e) slightly different and if it more closely resembled the law at issue in *Hallack*, it appears likely that the Georgia Supreme Court would have upheld its validity, especially since Justice Blackwell's concurrence says almost exactly that.[103]

Compared to *Park*, the holdings in North Carolina's recent *Griffin* and *Grady* cases appear to value states' priorities over their citizens as individuals. This implication exists partially because the holding in *Griffin* hinged on a North Carolina-specific interpretation of the Fourth Amendment that requires evidence to prove that the search in question effectively serves the State's stated interest in that search.[104] In *Grady*, the North Carolina Supreme Court specifically declined to extend full Fourth Amendment rights to those under administrative classification similar to Park's.[105]

Similarly, though the court in *Feliz* reached the same result and discussed important federal case law, the turning point in that case was reached through state law.[106] The main difference between that court's application of the law and the court in *Park* is the Massachusetts court's emphasis on the individualized suspicion of wrongdoing which, though discussed in United States Supreme Court cases, is especially important in the Massachusetts Declaration of Rights.[107] Without a similar state article specifically requiring individualized suspicion when searches involve privacy interests that are not minimal, the court in *Park* interpreted federal law similarly and reached the same final conclusion.[108]

One major difference between *Park* and *Feliz* is the courts' emphasis on either the individuals experiencing the sentences or the collective

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101. *Id.*

102. 483 U.S. at 875–76.

103. *Park*, 305 Ga. at 361–62. ("[N]othing in our decision prevents the General Assembly from requiring a sentencing court in the worst cases to require GPS monitoring as a condition of permitting a sexual offender to serve part of a life sentence on probation." (Blackwell, J., concurring)). *Id.* at 361.

104. *Griffin*, 818 S.E. at 342.

105. 831 S.E.2d at 567–68.

106. 119 N.E.3d at 710.

107. *Id.*, *see* ALM CONST. Pt. 1, Art. XIV.

108. 305 Ga. at 360.

benefits and losses associated with them. These cases indicate the two directions in which long-term satellite monitoring requirements will likely develop. Under decisions following the holding in *Park*, any long-term GPS monitoring requirement will probably be upheld as constitutional so long as the person subjected to it is still serving a sentence of some sort and the monitoring system is a requirement of that sentence. Other decisions may focus more on the federal (or state) history of emphasis on individualized suspicion and have holdings similar to *Feliz*, choosing to require an inspection of the individual circumstances to decide whether or not long-term tracking is appropriate.[109]

C. The Eighth Amendment: Another Route for Defendants

The majority in *Park* briefly mentioned a significant issue largely undiscussed in Park's defense: the massive cost each individual sentenced under O.C.G.A. § 42-1-14 would have to pay over the course of their lives.[110] Because this statute required long-term payment for the GPS service, it would inevitably raise serious issues for people simply unable to pay the fee.[111] The court speculated that a lack of payment would lead to an issue with another statutory provision that no individual may "knowingly and without authority . . . circumvent[] the operation of an electronic monitoring device" but did not address the potential for Eighth Amendment[112] claims against the statute.[113] Were the General Assembly to pass legislation that, as the concurrence suggested, "put the same policy into practice,"[114] the potential would remain for defendants to argue that the lifelong fine imposed violates the Eight Amendment's prohibition against "excessive fines."[115] The closest the court got to reaching this potential issue was to point out that the State did not cite any precedent in Georgia "for making citizens pay for the State to search them."[116]

D. Freedom, Imprisonment, and the National Conscience

All these cases explore the relationship between those who are free and those who are not—and the holding in *Park* underscores that

109. 119 N.E.3d at 710.
110. *Park*, 305 Ga. at 360 n.8.
111. O.C.G.A. § 42-1-14(e).
112. U.S. CONST. amend. VIII.
113. *Park*, 305 Ga. at 361 n.8 (quoting O.C.G.A. § 16-7-29(b)).
114. *Id.* at 361 (Blackwell, J., concurring).
115. U.S. CONST. amend. VIII.
116. *Id.* at 361 n.8.

difference. We may commonly imagine that the difference between prison and probation is almost as significant as the difference between prison and freedom, but this case draws probationers, parolees, and prisoners closer together, affirming the significant legal divide between people who have served their sentences and those who have not, whether or not an individual completes his or her sentence outside a physical prison.

At the end of the decision in *Park*, the concurrence gave the legislature not just a roadmap, but a free taxi to the final destination of forcing convicted individuals to wear—and pay for—GPS tracking devices for the rest of their lives post-sentencing.[117] Justice Blackwell went so far as to suggest that the General Assembly may codify life parole or prison sentences for all individuals deemed sexually dangerous predators and referred to specific instances in the Official Code of Georgia where the legislature has passed statutes with similar provisions and the supreme court has not struck them down.[118]

In cases subsequent to *Park*, primarily *Grady* and *Feliz*, state courts have grappled with the same issue and made decisions putting *Park* squarely in the middle of the current national trajectory on punishing individuals who have already served their sentences. *Feliz* determined that individuals convicted of nonviolent sexual offenses in Massachusetts do not have to worry about lifelong GPS tracking without individualized evaluations of their situations.[119] At this end of the spectrum, the difference between the free and those still serving their sentence is stark, and the Fourth Amendment rights of convicted persons are protected even if, after thirty years, they have not completed their full sentences.[120]

Under *Grady*, however, only a narrow group of people are guaranteed to be protected from permanent tracking devices—convicted individuals are exempt from lifelong satellite-based monitoring only if they were not convicted of violent sexual acts, convicted of sexual acts with certain minors, or branded with a certain administrative classification.[121] This holding smudges the line between those still serving their sentences and those who have completed theirs while strengthening the bars around an entirely different category of people: those who have served

117. *Id.* at 361–62 (Blackwell, J., concurring).

118. *Id.* at 361 (Blackwell, J., concurring) (citing O.C.G.A. § 17-10-6.1(b)(2) (2019) and O.C.G.A. § 42-8-35(a)(14) (2019)).

119. 119 N.E.3d at 710.

120. *Griffin*, 818 S.E.2d at 342.

121. *Grady*, 831 S.E.2d at 570.

their sentences but are permanently punished by an administrative classification.[122]

Park declines to protect individuals to the extent that *Felix* does, while also declining to favor the State to the extent to permit ongoing punishment under an administrative system after the individual has served a full sentence.[123] However, especially given the content of the concurrence, the eventual results of the decision in *Park* may closely mirror those in *Grady*.

This result is the blurring of the difference between prison and probation and is precisely what the dissenters in *Samson* feared.[124] In that case, Justices Stevens, Souter, and Breyer objected to the majority's opinion that "conclude[d] that parolees have no more legitimate an expectation of privacy in their persons than do prisoners."[125] Though the majority in *Park* emphasized that an individual's status as a probationer, without any notice of a tracking requirement, is not sufficient to subject these persons to warrantless searches at any time,[126] the court did not indicate that probationers who do have notice of a constant search requirement have any more privacy protections than prisoners. The opinion did not address the Georgia statutes which provide notice of a lifelong GPS monitoring requirement, but the concurrence did, specifically noting that such statutes historically have been perfectly permissible.[127] In that way, the majority in *Park* did not disavow (and the concurrence readily affirmed) the logic the *Samson* dissenting opinion scorned: that "[p]risoners have no legitimate expectation of privacy; parolees are like prisoners; therefore, parolees have no legitimate expectation of privacy."[128]

122. *Id.*
123. 305 Ga. at 360.
124. *See generally* 547 U.S. at 857 (Samson, J., dissenting).
125. *Id.* at 858 (Samson, J., dissenting).
126. 305 Ga. at 354 (citing *Jones*, 282 Ga. at 788).
127. *Park*, 305 Ga. at 361–62 (Blackwell, J., concurring).
128. 547 U.S. at 861 (Stevens, J., dissenting).