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Case Number 425,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALTON CANNON,	)	
	)	
Defendant-Below/Appellant,	)	
	)	**No. 425, 2025**
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below/Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWER TO OPENING BRIEF OF *AMICUS CURIAE*

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NATURE AND STAGE OF THE PROCEEDINGS

On August 21, 2017, a grand jury returned an indictment against Alton Cannon ("Cannon") for Failure to Register as a Sex Offender ("Failure to Register"). (A1; A25). Cannon failed to appear for his arraignment, and the Superior Court issued a capias. (A1-2). Nearly six years later, on June 5, 2023, a grand jury returned a second indictment against Cannon for Failure to Register. (A12; A26). Again, Cannon failed to appear for his arraignment, and the Superior Court issued a capias. (A12).

In September 2023, Cannon was returned on the capias and held on bond. (A12). In January 2024, Cannon was released and subsequently failed to appear for his March 2024 bench trial, resulting in another capias. (A13-15). In January 2025, Cannon was returned on the capias and held on bond. (A1-2; A15).

On February 19, 2025, Cannon filed a motion to proceed *pro se*, which the Superior Court granted. (A2-3; A16). On June 23, 2025, following a one-day bench trial, the court found Cannon guilty of Failure to Register in both cases. (A7; A20). The court immediately sentenced Cannon but issued a corrected sentencing order on June 30, 2025, which sentenced Cannon to an aggregate two years of incarceration suspended for one year of concurrent Level II probation. (A27-30).

On July 17, 2025, Cannon, through counsel, filed a notice of appeal. (A7; A20). That appeal was designated No. 311, 2025.

On September 10, 2025, while his appeal was pending, Cannon filed a *pro se* Motion for Reduction and Modification of Suspended Imposition of Sentence. (A31-52). When "[s]horn of its sovereign citizen surplusage, the motion ask[ed] for credit time" and "removal of the GPS monitoring placed on him by Probation and Parole" ("Probation"). (Am. Op. Br. at 2; A34-35; A39). The State responded on September 22, 2025. (A53-A56). On September 23, 2025, the Superior Court issued an order resolving the motion. (A57-58). It found no error in the calculation of Cannon's credit time. (A57-58). And it found that 11 *Del. C.* § 4121(u) "requires DOC to employ a GPS device to supervise Cannon for the duration of his probation." (A58).

On October 30, 2025, this Court remanded Cannon's counsel-filed appeal back to the Superior Court to determine whether Cannon could proceed *pro se*. (Ex. A). The Superior Court scheduled that hearing for November 21, 2025; Cannon failed to appear. (A8; A21-22). Following a rescheduled hearing on January 22, 2026, the Superior Court found Cannon's waiver of counsel knowing, intelligent, and voluntary. (A9; 22-23).

Concurrently, Cannon had filed a *pro se* notice of appeal and accompanying brief in support of that appeal. (Supr. D.I. 1; 10). That *pro se* appeal is the matter presently before this Court and was designated No. 425, 2025. Cannon argued the Superior Court erred because section 4121(u) applies only to "probation for the

offense that resulted in the registry requirement." (Supr. D.I. 10 at 37.) The State moved to affirm on the grounds that Section 4121(u)'s plain language requires any Tier III sex offender on probation be ordered to be monitored by GPS. (A59-70). It, however, noted that in a previous case in which the same legal issue had been raised such a motion was denied and counsel was appointed. (A64).

By order dated February 17, 2026, this Court appointed a*micus curiae* ("*Amicus*")[1] to assist it in resolving the "matter of statutory interpretation raised in this appeal." (A71). It requested *Amicus* submit briefing supporting Cannon's position that Section 4121(u)'s GPS requirement "applies only to probation for the offense that resulted in the registry requirement." (A71).

Amicus filed its opening brief on March 17, 2026. This is the State's response.

[1] Because *Amicus* was appointed to support Cannon's position, this answer uses "Cannon" except where contextually necessary or otherwise relevant to distinguish between Cannon and *Amicus*.

SUMMARY OF THE ARGUMENT

I. Cannon's argument is denied. The Superior Court correctly found that Cannon is a Tier III sex offender and that, as a consequence, Section 4121(u) requires Probation to electronically monitor him while he is on probation. Section 4121(u) requires this despite the fact that Cannon is not on probation for the offense that resulted in the registry requirement but for a subsequent offense. Section 4121(u)'s plain language does so because it has no conditional language limiting its application to the offense that resulted in the registry requirement. But even if Section 4121(u) were ambiguous, this reading would still be correct. It is not unreasonable. The legislative history supports it. Probation's decade-long interpretation does as well. And so too does a comparison with sister states' statutes governing electronic monitoring of sex offenders. Under either reading, plain language or ambiguity, this Court should affirm the Superior Court.

II. Cannon's argument is denied. Cannon raises for the first time in *Amicus*'s opening brief before this Court that Section 4121(u) is unconstitutional as applied to Cannon. Because this argument was not raised in the trial court, it is waived, unless he can show plain error. He cannot. All of the questions this Court requires be answered affirmatively to mount a meritorious plain error claim are here answered negatively. The record is inadequate, there was no error, any error was not violative of established law and thus not plain, and no substantial right was

affected. But even if reviewed *de novo*, Cannon fails to show Section 4121(u) unconstitutional as applied to him. That is so because the rationale used by the Court of Chancery in a previous ruling concluding Section 4121(u) constitutional applies here. This Court affirmed that ruling and the rationale that led to it. Because that reasoning applies to Cannon, this Court should find Cannon has failed to demonstrate Section 4121(u) unconstitutional for the reasons previously affirmed by this Court. Accordingly, this Court should affirm under either a plain error or *de novo* review.

STATEMENT OF FACTS

The State called one witness at trial, Detective Gaetan Macnamara of the Wilmington Police Department. (B21-22). Detective Macnamara monitors registered sex offenders in Wilmington. (B22). During its direct examination of Detective Macnamara, the State entered into evidence the self-authenticating certified record of Cannon's conviction for a 1998 sex offense. (B21-22; State's Ex. 1). That record showed that Cannon was required to register as a Tier III sex offender with the State Bureau of Identification. (B22). Because he was designated a Tier III sex offender, Cannon was required to register four times annually. (B22). At the time of trial, the last time Cannon had registered was January 2024. (B22). Before that, Cannon had last registered in December 2016. (B23).

ARGUMENT

I. SECTION 4121(u) REQUIRES GPS TRACKING FOR TIER III SEX OFFENDERS ANY TIME THEY ARE ON PROBATION.

Question Presented

Whether Section 4121(u)'s requirement for GPS monitoring applies only to probation for the offense that resulted in the registry requirement.[2]

Standard and Scope of Review

Generally, this Court reviews the Superior Court's "denial of a motion for correction of sentence for abuse of discretion."[3] But if that "claim involves a question of law, [this Court] review[s] the claim *de novo*."[4] "Issues of statutory interpretation are purely legal," meaning this Court's review of Section 4121(u) is *de novo.*[5]

Merits of Argument

Cannon raises the question of whether Section 4121(u)'s GPS requirement applies only to probation for the offense that resulted in the registry requirement or any time a Tier III sex offender is placed on probation. He asserts that Section 4121(u)'s GPS requirement applies only to "the probation for the offense that

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[2] A39.
[3] *Dickinson v. State*, 2022 WL 120997, at *2 (Del. Jan. 12, 2022) (citing *Fountain v. State*, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014)).
[4] *Id.*
[5] *Wilkerson v. State*, 338 A.3d 477, 485 (Del. 2025) (internal footnotes omitted).

resulted in the registry requirement."[6] He contends this is the unambiguous reading of Section 4121(u).[7] Alternatively, if Section 4121(u) is ambiguous, Cannon contends his reading is nonetheless correct. His arguments are unavailing.

Resolving this question tasks this Court with statutory interpretation. As always, that starts with the relevant statutory language.[8] And it ends by determining what the legislature intended with these words.[9] If those words are subject to only one reasonable interpretation, that interpretation controls.[10] But if there are multiple reasonable meanings, this Court discerns legislative intent through means beyond the text.[11] Whether relying on the plain language or looking past the text due to ambiguity, the conclusion here is the same: The legislature intended Section 4121(u)'s GPS requirement be imposed any time a Tier III sex offender is placed on probation. This Court should, accordingly, affirm the decision below.

A. Section 4121(u) Unambiguously Requires GPS Monitoring Any Time a Tier III Sex Offender Is on Probation.

Cannon contends two things make clear that Section 4121(u) unambiguously limits its GPS tracking requirement to the probation for the offense that led to the

[6] Am. Op. Br. at 13.
[7] *Id.* at 12-15.
[8] *Fuller v. State*, 104 A.3d 817, 821 (Del. 2014).
[9] *De Los Santos v. Allstate Property and Casualty Insurance Co.*, 2025 WL 2092402, at *3 (Del. July 25, 2025).
[10] *Id.*
[11] *State v. Barnes*, 116 A.3d 883, 884 (Del. 2015) (citing cases).

registry requirement.[12] First, Cannon asserts that the phrase "their probation" "clearly refers to the probation for the offense that resulted in the registry requirement."[13] Second, Cannon claims that it is clear that Section 4121(u) unambiguously limits its GPS tracking requirement when this section is read within the context of the sex offender registration statute.[14] Neither argument is persuasive. To the contrary, while the State agrees Section 4121(u) is unambiguous, it reaches the opposite conclusion.

1. The Plain Language of Section 4121(u) Requires GPS Monitoring Any Time a Tier III Sex Offender Is on Probation.

Section 4121(u) provides: "[A]ny Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet."[15] Within that language, Cannon emphasizes the phrase "their probation," conceding that it is "perhaps inelegantly worded."[16] Despite its "inelegant[] word[ing]," he nevertheless asserts that the phrase "clearly refers to the probation for the offense that resulted in the registry requirement."[17] Inelegant wording and

[12] Am. Op. Br. at 13.
[13] *Id.*
[14] *Id.*
[15] 11 *Del. C.* § 4121(u); *see State v. Floyd*, 2014 WL 6670204, at *2 (Del. Super. Ct. Oct 30, 2014) ("Pursuant to 11 *Del. C.* § 4121(u), the Legislature mandated that all Tier III sex offenders must wear a GPS locator ankle bracelet as a condition of their probation.").
[16] Am. Op. Br. at 13.
[17] *Id.*

clarity are ideas that would appear to be in conflict with one another. But in any event, Cannon fails to explain why the phrase "their probation" makes "clear" that Section 4121(u)'s GPS requirement is limited to probation for the offense that resulted in the registry requirement.[18] Nor could he, because, as explained below, Section 4121(u)'s language shows it applies any time a Tier III sex offender is placed on probation, not just when the probation is for the offense that resulted in the registry requirement.

Resolving Section 4121(u)'s meaning as to the instant question turns on four terms: (1) "sex offender"; (2) "probation"; (3) "any"; and (4) "their." The first, sex offender, is defined within the sex offender registration statute to be "any person who is, or has been … convicted of any of the offenses specified in §§ 765 through 780."[19] The second, probation, is defined in 11 *Del. C.* § 4302(14) as "the sentencing without imprisonment of an offender by judgment of the court following establishment of guilt, subject to the conditions imposed by the court, including the supervision and guidance of the Department [of Correction]'s field services."[20] "The last two, "any" and "their," are ordinary terms, which Merriam Webster Dictionary

[18] *See id.*
[19] 11 *Del. C.* § 4121(a)(4).
[20] 11 *Del. C.* § 4302(14).

defines to mean, "every" and "his or her," respectively.[21] Combining these four terms together with their definitions shows Section 4121(u)'s GPS requirement applies any time a Tier III sex offender is placed on probation.

Tellingly, the legislature included no language in Section 4121(u) that limits GPS monitoring to sex offenders who are on probation for the offense that resulted in the registry requirement. That absence shows Cannon's argued-for-reading is not based on the "peculiar and appropriate meaning"[22] of the statutory terms and the "common and approved usage" of ordinary terms.[23] Thus, if adopted, his reading would materially alter section 4121(u)'s meaning by grafting onto the statute language limiting it to the original qualifying sex offense. Given that the legislature chose not to include such language in Section 4121(u), such a construction cannot qualify as a "plain" reading of the statute.[24]

[21] MERRIAM–WEBSTER, https://www.merriam-webster.com/dictionary/any (last visited Apr. 7, 2026); MERRIAM–WEBSTER, https://www.merriam-webster.com/dictionary/their (last visited Apr. 7, 2026).
[22] *See* 1 *Del. C.* § 303.
[23] *See id*.
[24] *See Lawson v. State*, 91 A.3d 544, 551 (Del. 2014) (holding that construction not based on the "peculiar and appropriate meaning" of statutory terms cannot qualify as a "plain" reading of the statute).

2. The Statutory Context of Section 4121(u) Shows It Requires GPS Monitoring Any Time a Tier III Sex Offender Is on Probation.

Cannon next argues that subsections 4121(c) and 4121(e)(2)(a) of the sex offender registration statute justify inserting such conditional language into Section 4121(u).[25] Section 4121(c) addresses the procedure for assigning a "sex offender" to the applicable tier when the person pleads guilty to an offense included in the originally charged offense or when the person violates the terms of "that person's own probation or parole" if no tier level had been assigned at the time of original sentence.[26] Section 4121(e)(2)(a) provides that Tier III offenders can apply to reduce their tier if 25 years have passed without the offender having had any additional convictions or findings of violation.[27] These provisions provide no basis for the Court to rewrite the statute in a way that disregards its plain language.

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[25] Am. Op. Br. at 13. Cannon also summarizes Sections 4121(a)(4) and 4121(b) as defining sex offender and requiring courts to inform sex offenders of their tier designation respectively. Cannon does not link his summary of those sections to his arguments regarding Section 4121(u).

[26] *See* 11 *Del. C.* § 4121(c); *Drake v. Board of Parole*, 2011 WL 5299666, at *3 (Del. Super. Ct. Oct. 25, 2011). 11 *Del. C.* § 4121(c) pertains to persons defined as sex offenders under paragraph (a)(4)e, which states in pertinent part: a sex offender is defined as any person who is, or has been "[c]harged by complaint, petition, information or indictment with any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, and who thereafter pleads guilty to any offense included in the originally charged offense, as provided in § 206 of this title, if the person is thereafter designated as a sex offender by the sentencing judge pursuant to subsection (c) of this section."

[27] 11 *Del. C.* § 4121(e)(2)(a).

a. Section 4121(c) Fails to Show That Section 4121(u) Applies Only to the Offense That Resulted in the Registry Requirement.

As to Section 4121(c), Cannon does not expressly identify why it informs his argument.[28] Cannon does, however, emphasize this language in Section 4121(c): "*that person's own probation or parole*."[29] The intended takeaway appears to be that Section 4121(c)'s phrase "that person's own probation or parole" means the same thing as Section 4121(u)'s phrase "their probation" because the language is similar. Consequently, if Section 4121(c) refers to the probation following the qualifying offense, then so does Section 4121(u). But this argument is wrong for two reasons. First, when the legislature uses different phrases, that evidences it intended two different meanings.[30] Thus, the different phrasing of the two sections means Section 4121(c) does not dictate the meaning of Section 4121(u). Second, Section 4121(c), like Section 4121(u), contains no conditional language limiting its application to probation for the original qualifying offense.[31] As such, even if the

[28] *Compare* Am. Op. Br. at 13 (citing to Section 4121(c) without explanation) *with* Am. Op. Br. at 14 (explaining that Section 4121(e)(2) supports his reading of Section 4121(u)).
[29] Am. Op. Br. at 13 (quoting Section 4121(c)) (emphasis in *Amicus*'s opening brief).
[30] *Cornette v. State*, 2026 WL 309253, at *5 (Del. Feb. 5, 2026) (explaining that when interpreting a statute "the legislature's use of different language" in one section versus another "cannot [be] minimize[ed]").
[31] As explained below, in other sections of the sex offender registration statute, the legislature uses language explicitly linking certain outcomes or consequences to the original qualifying offense. *Infra* I.A.2.c. That language does not appear in Section 4121(c) or Section 4121(u).

phrases used in Section 4121(c) and 4121(u) are to have the same meaning, that does not support Cannon's reading.

b. Section 4121(e)(2)(a) Fails to Show That Section 4121(u) Applies Only to the Offense That Resulted in the Registry Requirement.

As to Section 4121(e)(2)(a), Cannon contends that it "makes clear that the only penalty imposed on Tier III offenders who subsequently commit unrelated offenses is that it restarts the clock on their ability to petition for a tier reduction."[32] According to Cannon, this provision "is strong evidence that the General Assembly did not intend GPS monitoring to be applied to future probationary sentences" because Section 4121(e)(2)(e) "impose[s] a specific sanction for future offenses."[33] In other words, Section 4121(e)(2)(a) is the section addressing the punishments to be imposed on sex offenders who commit future offenses, and because imposing GPS monitoring is a punishment, it should appear in Section 4121(e)(2)(a) if it were to apply to future offense.

Cannon's argument is unavailing. First, GPS tracking is not punitive; it is predicated on community safety.[34] And so, even if Section 4121(e)(2)(a) were the sole location in the sex offender registration statute to address punishment for future

[32] Am. Op. Br. at 14.
[33] *Id.*
[34] *See Hassett v. State*, 2011 WL 446561, at *1 (Del. Feb. 8, 2011); *see also Floyd*, 2014 WL 6670204, at *2 (finding defendant's claim that Probation's requirement for him to wear ankle monitoring bracelet renders his sentence illegal meritless).

offenses, Section 4121(u)'s GPS requirement need not appear there because it is not a punishment. Second, Cannon's logic here seems to be that the legislature intended Section 4121(e)(2)(a) to be the sole subsection governing punishment for future offenses. Yet nothing within Section 4121(e)(2)(a) purports to provide that it governs all consequences for future offenses. Nor does Cannon cite any authority for the principle that the legislature must address or should be presumed to have addressed a particular issue in only one subsection of a statute.

c. Sections of the Sex Offender Registration Statute Show Section 4121(u) Requires GPS Monitoring Any Time a Tier III Sex Offender Is on Probation.

While the sections to which Cannon refers the Court do not materially inform the analysis, that is not to say that the sex offender registration's other provisions are uninformative. Cannon argues that this Court should read into Section 4121(u) the qualifier that it is limited to the offense that resulted in the registry requirement. But elsewhere in the sex offender registration statute, the legislature included precisely such language, linking something back to the offense that resulted in the registry requirement. Section 4121(e)(2)(a), on which Cannon relies, is one example. There, a sex offender may not seek redesignation if they "have violated the terms of any probation, parole or conditional release *relating to the sentence originally imposed following the underlying sex offense*."[35] Sections 4121(e)(2)(b) and (c) contain the

[35] 11 *Del. C.* § 4121(e)(2)(a) (emphasis added).

same language.[36] Similarly, Section 4121(f) specifies the notices that must go out after a "sex offender has completed a Level IV or V sentence imposed *following a conviction for any offense specified in paragraph (a)(4).*"[37] And Section 4121(g) requires those notices go out whenever a sex offender is sentenced to probation or a fine "*following a conviction for any offense specified in paragraph (a)(4).*"[38] These provisions show the legislature knew how to craft language linking a matter back to the original qualifying sex offense. The legislature could have included similar language in Section 4121(u). It did not.[39] Cannon provides no basis to overwrite that decision.[40]

B. Section 4121(u), Even if Ambiguous, Requires GPS Monitoring Any Time a Tier III Sex Offender Is on Probation.

Alternatively, Cannon argues that if this Court finds the statutory language to be ambiguous, looking beyond the statute's plain language supports his conclusion that it applies only to the probation for the offense that resulted in the registry requirement.[41] Cannon marshals three supportive arguments. First, he claims that

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[36] 11 *Del. C.* §§ 4121(e)(2)(b) and (c) (emphasis added).
[37] 11 *Del. C.* § 4121(f) (emphasis added).
[38] 11 *Del. C.* § 4121(g) (emphasis added).
[39] *See Arnold v. State*, 49 A.3d 1180, 1184 (Del. 2012) (holding that the Court must apply the unambiguous plain language of a statute as written where the General Assembly did not include language narrowing the statute).
[40] *See Cornette*, 2026 WL 309253, at *6 (explaining limiting language appearing in one section of a statute but not another showed the limiting language was not meant to apply to that second section).
[41] Am. Op. Br. at 15-21.

the State's interpretation would lead to absurd results.[42] Second, he asserts that the debate in the legislature supports his conclusion.[43] And third, he argues that a review of other states' statutes governing the GPS monitoring of sex offenders also supports his conclusion.[44] These arguments are unavailing.

1. The State's Reading of Section 4121(u) Is Not Unreasonable.

First, Cannon is wrong that the State's interpretation—that Section 4121(u)'s GPS requirement applies to subsequent offenses—yields unreasonable or absurd results. Cannon asserts that absurdity results because the State's reading causes gaps in the electronic monitoring of sex offenders.[45] That is, sex offenders will be tracked while on probation for the qualifying offense, end that probation and the associated monitoring, commit a new offense, and return to probation and electronic monitoring.[46] That is absurd, according to Cannon, because if Tier III sex offenders were so dangerous, there would be no gaps in monitoring.[47]

The error in Cannon's argument is that it ignores the shift in expectations of privacy that occurs when an individual is placed on probation.[48] This is discussed

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[42] *Id.* at 19-21.
[43] *Id.* at 18-19.
[44] *Id.* at 15-17.
[45] *Id.* at 20-21.
[46] *Id.* at 20.
[47] *Id.* at 20-21.
[48] *McAllister v. State*, 807 A.2d 1119, 1125-26 (Del. 2002) (relying on appellant's status as a probationer, which limited their privacy rights, to conclude search was lawful).

in detail *infra*, but the essential point is this: While on probation, an individual has a diminished expectation of privacy, and they regain a normalized expectation of privacy when probation ends.[49] This shift explains why gaps occur in the electronic monitoring of Tier III sex offenders. On one hand, their expectations of privacy diminish while on probation causing the legitimate government interest in reducing recidivism of sex offenders via electronic monitoring to outweigh those expectations on privacy.[50] On the other hand, a Tier III sex offender's expectations of privacy become more normalized when off probation. And it is not unreasonable for the legislature to have concluded those more normalized expectations of privacy outweighed the legitimate government interest in reducing recidivism of sex offenders via electronic monitoring.[51] Section 4121(u)'s imposition of GPS monitoring for Tier III sex offenders while on probation thus reflects not a shift in danger posed, as Cannon claims, but instead a shift in the balancing of individual privacy interests and legitimate government interests. Given such balancing is constitutionally required,[52] it is not unreasonable for the legislature to have done so.

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[49] *Infra* II.B.
[50] *See Doe v. Coupe*, 143 A.3d 1266, 1276-77 (Del. Ch. 2016), *affirmed sub nom*, *Doe No. 1 v. Coupe*, 2017 WL 837689 (Del. Mar. 3, 2017).
[51] *See id.* at 1275-79 & n.87
[52] *See id.* at 1274-79 (addressing constitutional balancing requirements for GPS monitoring of sex offenders).

Additionally, Cannon's contention that it is absurd to electronically monitor sex offenders when placed on probation for a subsequent offense is belied by his discussion of Florida's similar statute mandating electronic monitoring of certain released sex offenders.[53] As will be discussed in detail *infra*,[54] courts interpreting Florida's statute have imposed electronic monitoring on sex offenders who commit a subsequent offense regardless of whether that subsequent offense is a sex offense.[55] Despite the fact that Florida reached the same conclusion as the Superior Court, Cannon contends Delaware doing so would be absurd.[56] However, Florida's requirement for GPS monitoring of sex offenders on probation for future offenses evidences it is not absurd nor unique for Delaware to do so. Moreover, some states, as discussed in more detail *infra*, impose electronic monitoring on sex offenders for life.[57] This further evidenced that Delaware's paradigm is reasonable because it represents a middle ground balancing privacy interests and the legitimate government interests.

[53] *Compare* Am. Op. Br. at 20-21 *with* Am. Op. Br. at 15-16.
[54] *Infra* I.A.4.
[55] Am. Op. Br. at 15-16.
[56] *Id.* at 20-21.
[57] *Infra* I.A.4.

2. The Legislative History of Section 4121(u) Supports the State's Reading.

Cannon contends the legislative debate on the bill that would become Section 4121(u) supports his reading of the statute.[58] He first argues that nothing within the debates indicates that it would apply to subsequent offenses and that as a result this Court can infer Section 4121(u) would not apply to subsequent offenses.[59] Next, he identifies a legislator's statement that few Tier III sex offenders would get out of prison but Section 4121(u) would be a "way we can track them."[60] Cannon contends the "only reasonable inference" from this statement is that Section 4121(u) was "never intended. . . to be applicable to future offenses."[61] Last, Cannon identifies another legislator's comments that the bill would lower the prison population "and still protect the public."[62] This statement, Cannon argues, "indicates that the General Assembly never intended the statute to be interpreted as it currently is."[63]

While a statute's legislative history can inform this Court's analysis,[64] all of Cannon's references to it here are thin evidence of legislative intent as to this issue. For example, it is true that the bill's debate is silent as to whether Section 4121(u)

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[58] *Am.* Op. Br. at 18-19.
[59] *Id.* at 18.
[60] *Id.* (quoting A85).
[61] *Id*.
[62] *Id.* (quoting A87).
[63] *Id*.
[64] *Rubick v. Security Instrument Corp.*, 766 A.2d 15, 18 (Del. 2000).

would apply to subsequent offenses, but it is also true that the discussion is silent regarding whether Section 4121(u) would be limited to the qualifying offense. The absence of a statement towards either interpretation of Section 4121(u) renders the debate's meaning as to this issue uninformative. Similarly, the two statements of legislators Cannon identifies are ambiguous as to the issue of Section 4121(u)'s applicability to subsequent offenses. In total, those two statements make four points: (1) Section 4121(u) would allow the tracking of sex offenders; (2) few sex offenders to which Section 4121(u) applied would be released from prison; (3) Section 4121(u) would lower the prison population; and (4) Section 4121(u) would protect the public. None of these points speak to or even appear to relate to whether Section 4121(u) is limited to the qualifying offense or applies to subsequent offenses. Yet Cannon invites this Court to infer that from them. This Court should decline to do so given the absence of any clear applicability to this issue.

This is not to suggest that the legislative history is entirely uninformative as to whether Section 4121(u) is limited to the qualifying offense or applies to subsequent offenses. Here, the synopsis to the bill provides guidance about the legislature's intent when it enacted section 4121(u).[65] That synopsis states, in its entirety: "This bill provides for GPS tracking for Tier III sex offenders while they

[65] *See Arnold*, 49 A.3d at 1184 (noting that bill's synopsis provides guidance about the "intent" of the legislature when it enacted statute).

are on probation being supervised by the Department of Correction."[66] Like Section 4121(u), the synopsis imposes two conditions for GPS monitoring: (1) that the individual be a Tier III sex offender; and (2) that they be on probation. Nowhere does it limit the statute's application to the probation for the offense that resulted in the registry requirement.[67] Thus, the legislature has twice explained that Section 4121(u)'s GPS tracking condition applies any time a Tier III sex offender is on probation.

3. Probation's Longstanding Interpretation of Section 4121(u) Supports the State's Reading.

Cannon does not address Probation's longstanding interpretation of Section 4121(u), which reads that section's GPS requirement to apply to subsequent offenses. Within the context of statutory interpretation, longstanding interpretations of a statute serve as evidence of legislative intent, a concept this Court summarized as follows:

> When a statute has been applied by courts and state agencies in a consistent way for a period of years, that is strong evidence in favor of that interpretation. Under the doctrine of *stare decisis*, we must take seriously the longstanding interpretation of a statute held by our

[66] A73.

[67] *Arnold*, 49 A.3d at 1184 (finding that where synopsis contained "no conditional language" to the statute's application and declining, as a result, to read such conditional language into the statute).

> Superior Court, especially when it has been relied upon by the key actors in our criminal justice system.[68]

This also applies to longstanding agency interpretations so long as they are practical and plausible.[69] Within Delaware, the principle is nearly a century old.[70] Its application finds many examples.[71] Consider *State ex rel. Zebley v. Mayor and Council of Wilmington*, where this Court addressed four certified questions concerning a firefighter's pension fund.[72] Those questions arose within the context of the City of Wilmington's refusal to pay into that fund.[73] This Court found "much to be said logically for both of the two constructions urged."[74] And it explained "the answer to this particular controversy is found in the principle of statutory construction that were a statute is doubtful or ambiguous in its terms, a practical administrative interpretation over a period of time, if founded upon plausibility, will be accepted by the courts as indicative of the legislative intent."[75]

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[68] *Barnes*, 116 A.3d at 890-91 (cleaned up).
[69] *Vegso v. Board of Trustees*, 1986 WL 9019, at *4 (Del. Aug. 20, 1986).
[70] *Doe ex dem. Wilkerson v. Roe et al.*, 171 A. 191, 195 (Del. 1933) ("The practical construction given doubtful statutes by officers whose duty it is to execute the statutes is entitled weight.").
[71] *Barnes*, 116 A.3d at 890 n.37 & 38 (citing cases for the proposition that longstanding agency interpretation evidences legislative intent).
[72] 163 A.2d 258, 259 (Del. 1960).
[73] *Id.* at 260.
[74] *Id.* at 263.
[75] *Id.*

So too here. Since at least 2016, Probation has interpreted Section 4121(u) to require GPS monitoring for all Tier III sex offenders on probation.[76] If that interpretation were wrong, the legislature has had nearly a decade to say so. It has not. The only logical conclusion is that the legislature considers Probation to be correctly implementing Section 4121(u).[77] This is particularly true here where the legislature has amended the sex offender registration statute numerous times since it enacted Section 4121(u) yet has chosen not to amend Section 4121(u).[78]

While a longstanding agency interpretation can be rejected if implausible,[79] Probation's interpretation of Section 4121(u) is not. The plain language supports Probation's reading.[80] The legislative synopsis does so as well.[81] Indeed, as the Court of Chancery has observed, "it would seem rare indeed to discover that a practical construction that had been relied upon for many years was based on an

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[76] *Doe*, 143 A.3d at 1270 (summarizing testimony of Probation that all Tier III sex offenders are placed on GPS monitoring).
[77] *Watson v. Burgan*, 610 A.2d 1364, 1367 (Del. 1992) ("In view of the fact that the original regulation had remained in effect for fourteen years without legislative reaction, the practical and plausible administrative interpretation was acceptable as indicative of legislative intent.").
[78] *See U.S. v. Rutherford*, 442 U.S. 544, 554 n.10 (1979) ("[If] an agency's statutory construction has been fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." (internal quotations omitted)).
[79] *Vegso*, 1986 WL 9019, at *4.
[80] *Supra* I.A.
[81] *Supra* I.B.2.

entirely implausible reading of the text at issue."[82] Section 4121(u) is not that rare case, and Probation's decade-long interpretation of Section 4121(u) evidences that the State's reading is correct.

4. Other States' Statutes Mandating Electronic Monitoring of Certain Sex Offenders Support the State's Reading.

Cannon last supports his reading of the GPS requirement in Section 4121(u) by identifying how six other states handle the GPS monitoring of sex offenders: (1) Florida; (2) Tennessee; (3) Massachusetts; (4) West Virginia; (5) California; and (6) Idaho.[83] And he concludes by positing that applying the GPS requirement to future offenses would render Delaware "unique."[84] Cannon's reliance on other states' interpretations of their GPS-monitoring statutes is unpersuasive in interpreting Section 4121(u).

a. Florida's Statute Does Not Support Cannon's Reading of Section 4121(u).

Cannon begins with Florida, explaining that Florida interprets its GPS requirement for sex offenders on probation to apply to subsequent felonies.[85] True enough. But then, Cannon appears to reason as follows: (1) Florida clearly requires GPS monitoring of sex offenders placed on probation for a subsequent offense;

[82] *Harvey v. City of Newark*, 2010 WL 4240625 (Del. Ch. Oct. 20, 2010).
[83] Am. Op. Br. at 15-17.
[84] *Id.* at 17.
[85] *Id.* at 15-16.

(2) Section 4121(u) does not clearly provide that sex offenders placed on probation are subject to GPS monitoring; and (3) because the Florida statute is clearer on GPS monitoring applying to subsequent offenses, Delaware's statute should be read to not apply to subsequent offenses. For this logic to hold, Cannon would need to provide some evidence that Delaware at the time of Section 4121(u)'s enactment knew of or based that section on Florida's statute.[86] Else, how can Florida's statute impact how Section 4121(u) ought to be read? Cannon provides nothing of the sort, and in its absence, there is no basis to conclude Florida's statute informs what the legislature intended Section 4121(u) to mean.

The State maintains that Cannon's logic is dubious. But even if Cannon's logic held, it would not help him. The reason is that numerous states do what Florida does but from the opposite end. That is, they clearly provide that their GPS monitoring requirement of sex offenders is limited to the qualifying offense. Massachusetts, to which Cannon cites, is one.[87] So are Alaska,[88] Arizona,[89]

[86] When comparing one Delaware statute to another, this Court presumes the legislature was aware of and intended any differences. *See, e.g.*, *Zambrana v. State*, 118 A.3d 773, 780 n.32 (Del. 2015). No such presumption exists when comparing a Delaware statute to a sister state's statute.
[87] Mass. Gen. Laws Ann. ch. 265, § 47.
[88] Alaska Stat. Ann. § 12.55.100(f).
[89] Ariz. Rev. Stat. Ann. § 13-902.

Mississippi,[90] Montana,[91] Ohio,[92] Oregon,[93] and South Carolina.[94] Cannon's logic, again assuming it holds, must flow both ways. And if Florida weighs in favor of Cannon's interpretation of Section 4121(u), then these states' statutes would serve as a counterbalance and weigh in favor of the State's interpretation.

b. West Virginia's and Idaho's Statutes Do Not Support Cannon's Reading of Section 4121(u).

As to West Virginia, California, and Idaho, Cannon likens their statutes to Delaware's and states that he has found no case saying that they apply to future offenses.[95] The implication appears to be that, because no case interprets these statutes as requiring probation for subsequent offenses, they support his reading of Section 4121(u). But just as Cannon has found no case interpreting these statutes in favor of the State's reading, he has found no case that interprets these statutes in favor of his reading. (The State has likewise found no decisional law on the statutes from West Virginia or Idaho; California it discusses below.) In sum then, Cannon presents this Court with other states' statutes that are equally "ambiguous" to Delaware's[96] and that have not been interpreted by their state courts. It is unclear

[90] Miss. Code Ann. § 99-19-84.
[91] Mont. Code Ann. § 46-18-206.
[92] Ohio Rev. Code Ann. § 2929.13.
[93] Or. Rev. Stat. Ann. § 144.103.
[94] S.C. Code Ann. § 23-3-540.
[95] Am. Op. Br. at 17.
[96] W. Va. Code § 62-11-D-3; Idaho Code § 20-219.

how this informs the meaning of Section 4121(u), and there is no apparent reason why it should.[97]

c. California's Statute Supports the State's Reading of Section 4121(u).

As to California, Cannon refers this Court to Section 3010.10, which uses language comparable to Section 4121(u).[98] Each establishes electronic monitoring as a condition of parole or probation and, assuming Section 4121(u) is ambiguous, do not specify whether that condition applies only to the original qualifying offense or to future offenses:

Section 3010.10	Section 4121(u)
A person who is required to register as a sex offender pursuant to Section 290 as a condition of parole shall report to his or her parole officer within one working day following release from custody.[99]	[A]ny Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet.[100]

California interprets Section 3010.10 to apply to future offenses. For example, in *California v. Badue*,[101] Steve Badue appealed an order revoking his

[97] Other states' statutes are similarly ambiguous as to whether they apply only to the qualifying offense or subsequent offenses, but the State identified no relevant decisional case law interpreting them. *See* Ala. Code § 15-20A-20; Ark. Code Ann. § 12-12-923; Colo. Rev. Stat. Ann. § 18-1.3-1006; 730 Ill. Comp. Stat. Ann. 5/3-3-7; Ind. Code Ann. § 11-13-3-4; and Iowa Code Ann. § 692A.124.
[98] Am. Op. Br. at 17.
[99] Cal. Penal Code § 3010.10.
[100] 11 *Del. C.* § 4121(u).
[101] *California v. Badue*, 2024 WL 3811277, at *1 (Cal. Ct. App. Aug. 13, 2024).

parole because he did not maintain his GPS device.[102] That parole stemmed from non-sex offense convictions.[103] But the court explained Badue was subject to GPS monitoring due to a prior sex offense conviction and cited to Section 3010.10.[104] Importantly then, Badue was on probation for a subsequent non-sex offense conviction but the court read GPS monitoring as mandatory under Section 3010.10 due to a prior sex offense conviction. In other words, California interpreted section 3010.10 to apply to future offenses.[105] In sum, the only sister state that has an arguably ambiguous statute comparable to Delaware's statute interprets that statute to apply to subsequent offenses.

d. Tennessee's Statute Does Not Support Cannon's Reading of Section 4121(u).

The last state to which Cannon turns is Tennessee, which he suggests makes GPS monitoring of sex offenders a mandatory condition of probation: "Tennessee imposes GPS monitoring as a 'mandatory condition of release'…."[106] His

[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *See also California v. Calzada*, 2022 WL 556831, at *1 (Cal. Ct. App. Feb. 24, 2022) ("Defendant's parole officer noted that due to his prior 2005 rape conviction, defendant was subject to mandatory sex offender registration and continuous GPS monitoring pursuant to sections 290 and 3010.10, subdivision (a)."); *California v. Gaffney*, 2018 WL 947794, at *1 (Cal. Ct. App. Feb. 20, 2018) ("Gaffney was released on parole on June 2, 2014. As a prior sex offender, he was subject to special conditions of parole. Among other conditions, Gaffney was required to wear a GPS monitoring device.").
[106] Am. Op. Br. at 16 (quoting Tenn. Code. Ann. § 40-39-303).

suggestion is incorrect. The statute is permissive, providing that the board of parole "*may* require" electronic monitoring.[107] In any case, Tennessee's paradigm is sufficiently different than Delaware's such that it does not inform the issue here. Briefly, Tennessee places its highest tier sex offenders on parole for life.[108] Tennessee law then allows GPS monitoring for the duration of that parole.[109] In other words, Tennessee law allows the electronic monitoring of high tier sex offenders for life. This framework does not inform this Court's interpretation of Section 4121(u). Nor is Tennessee's imposition of electronic monitoring for life of high tier sex offenders unique.[110] Tennessee and other states like it, however, do provide further evidence that Delaware's imposition of GPS monitoring of Tier III sex offenders any time they are on probation is neither unreasonable nor unique but represents a middle ground when contrasted with other states who allow such monitoring for life.

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[107] Tenn. Code Ann. § 40-39-303 (emphasis added).
[108] *Nicols v. Lee*, 2023 WL 5185127, at *3 (M.D. Tenn. Aug. 11, 2023), *report and recommendation adopted*, 2023 WL 6129504 (M.D. Tenn. Sept. 19, 2023).
[109] *Id.*
[110] *See* Cal. Penal Code § 3004; La. Stat. Ann. § 15:560.3; Md. Code Ann., Crim. Proc. §§ 11-723(c)(1)(i), (d)(3)(i); Mich. Comp. Laws Serv. § 750.520n(1); Mo. Rev. Stat. § 217.735; Neb. Rev. Stat. Ann. § 83-174.03; N.C. Gen. Stat. § 14-208.40, 208.40A(c); R.I. Gen. Laws § 11-37-8.2.1; Wis. Stat. § 301.48 (2011);

C. The State Agrees This Issue Falls Within an Exception to the Mootness Doctrine.

Cannon contends this Court should resolve this matter even if it becomes moot. This Court may dismiss an appeal for mootness under Supreme Court Rule 29(b). "Under the mootness doctrine, although there may have been a justiciable controversy at the time the litigation commenced, the action will be dismissed if that controversy ceases to exist."[111] In *Burroughs v. State*,[112] this Court explained there are "two generally recognized exceptions to the mootness doctrine: situations that are capable of repetition but evade review or matters of public importance."[113] Here, Cannon contends both exceptions are met.[114] The State agrees in part.

1. There Is No Credible Basis to Contend the Matter Will Not Repeat and Yet Evade Review.

In *Burroughs*, this Court held that a constitutional challenge to pretrial detention satisfied the first exception to mootness.[115] In reaching that conclusion, it relied on the United States Supreme Court decision, *Gerstein v. Pugh*,[116] and, in particular, the following language:

> Pretrial detention is by nature temporary, and it is most unlikely that any given individual could have his

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[111] *White v. Delaware Board of Parole*, 2013 WL 455159, at *1 (Del. Feb. 5, 2013) (citing *General Motors Corp. v. New Castle County,* 701 A.2d 819, 823 (Del. 1997)).
[112] *Burroughs v. State*, 304 A.3d 530 (Del. 2023)
[113] *Id.* at 539 (internal quotations omitted).
[114] Am. Op. Br. at 26-28.
[115] *Burroughs*, 304 A.3d at 539-40.
[116] *Gerstein v. Pugh*, 420 U.S. 103 (1975).

> constitutional claim decided on appeal before he is either released or convicted. The individual could nonetheless suffer repeated deprivations, and it is certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures. The claim, in short, is one that is distinctly 'capable of repetition, yet evading review.[117]

This language applies with equal force to probation. It would make equal sense, and therefore apply with equal force, if the phrases "pretrial detention" and "released or convicted" were substituted with "probation" and "released from probation," respectively. That conclusion is supported by this Court's precedent in which it rejected the claim that an appeal challenging a violation of probation should be dismissed as moot upon the completion of appellant's probation, finding it raised issues capable of repetition yet evading review.[118]

Moreover, as Cannon highlights, this matter has already repeated, and if dismissed as moot here would evade review.[119] To summarize, *Amicus* and the State previously fully briefed this issue in *Dammeyin Johnson v. State*, 269, 2021. This Court scheduled *en banc* oral argument, Johnson's probation ended before the scheduled date, and the parties filed a stipulation of dismissal.[120] Accordingly, because this issue has repeated, there is no basis to claim it is not capable of

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[117] *Burroughs*, 304 A.3d at 539 (quoting *Gerstein*, 420 U.S. at 110 n.11) (brackets removed).
[118] *See, e.g.*, *Cruz v. State*, 990 A.2d 409, 417 n.36 (Del. 2010).
[119] Am. Op. Br. at 27-28.
[120] *Id.*

repetition. Likewise, it has previously evaded review and will continue to do so if this matter is dismissed as moot.

2. This Matter Does Not Fall Within the Public Interest Exception.

Cannon also argues that the public interest exception applies.[121] For that argument he provides no supporting case law.[122] Instead, he asserts that it is important to probationers who are subject to GPS monitoring and bear its costs.[123] And he also asserts that it is "important for this Court to provide guidance."[124] Both points are true but insufficient to place this matter within the public interest exception. That is because both are axiomatic. A matter being litigated is always important to those litigating it, and this Court's guidance is always important. As such, if such arguments were sufficient to invoke the public interest exception, every litigation would be subject to it.

To the contrary, the public interest exception applies where the matter is in some way significant more broadly. In *Burroughs*, for example, the Court found the exception met because it challenged "the constitutionality of our bail *system*."[125] Here, Cannon does not challenge the probation *system* but a piece of it. *McDermott*

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[121] Am. Op. Br. at 28.
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Burroughs*, 304 A.3d at 539 (emphasis added).

Inc. v. Lewis[126] serves as another example, and there this Court resolved a moot issue because it ultimately decided to reverse the judgment of the trial court and failing to address the issue would leave that lower court's decision in place.[127] Unlike *McDermott*, failing to resolve this issue will not affect some change in the law but instead leave it where it has been since at least 2016. Given that Cannon's challenge does not bear broad significance, it does not appear to fall within the public interest exception.

[126] *McDermott Inc. v. Lewis* , 531 A.2d 206 (Del. 1987).
[127] *Id.* at 212.

II. CANNON HAS FAILED TO SHOW SECTION 4121(u) IS UNCONSTITUTIONAL AS APPLIED TO HIM AND OTHER SIMILARLY SITUATED PROBATIONERS.

Question Presented

Whether Section 4121(u) is unconstitutional as applied to Cannon and other similarly situated probationers.[128]

Standard and Scope of Review

As a constitutional claim, this Court would typically review this claim *de novo*.[129] But, because this claim is raised for the first time on appeal, this Court's review of Cannon's constitutional claim is for plain error.[130] "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[131] It is "limited to material defects which are apparent on the face of the record; which

[128] This argument was not preserved before the trial court. Del. Sup. Ct. R. 14(b)(vi)(A)(1). Nor did this Court's order appointing *Amicus* identify this argument as a point to be addressed. A71-72 ("*Amicus curiae* shall file briefs supporting appellant's position that 11 *Del. C.* § 4121(u) . . . applies only to the probation for the offense that resulted in the registry requirement."). While Cannon raised the Fourth Amendment before the trial court, it was limited to the need for a warrant to impose GPS monitoring. A42.

[129] *Powell v. State*, 173 A.3d 1044, 1046 (Del. 2017) ("[C]onstitutional claims are reviewed *de novo*.").

[130] *Hardwick v. State*, 2023 WL 4484963, at *1 (Del. July 11, 2023) (citing Del. Sup. Ct. R. 8); *Shawe v. Elting*, 157 A.3d 152, 168 (Del. 2017).

[131] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[132]

Merits of Argument

Cannon argues that Section 4121(u) is unconstitutional as applied to him and those like him.[133] He begins by summarizing the relevant constitutional context with respect to his constitutional claim, a summary with which the State agrees.[134] That summary concludes by explaining that the appropriate framework for assessing Section 4121(u)'s constitutionality is the Special Needs Doctrine.[135] Again, the State agrees. That doctrine balances three inquiries:

1. "[T]he nature of the privacy interest upon which the search here at issue intrudes";[136]
2. [T]he character of the intrusion that is complained of";[137] and
3. "[T]he nature and immediacy of the governmental concern at issue [in the case], and the efficacy of [the disputed] means for meeting it."[138]

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[132] *Id.*
[133] Am. Op. Br. at 21-26.
[134] *Id.* at 21-23.
[135] *Id.* at 23.
[136] *Doe*, 143 A.3d at 1274 (quoting *Vernonia School District 47J v. Acton*, 515 U.S. 646, 654 (1995)).
[137] *Id.* (quoting *Vernonia*, 515 U.S. at 658).
[138] *Id.* (quoting *Vernonia*, 515 U.S. at 660) (second and third brackets in *Doe*).

Its aim is to examine the "competing private and public interests of the parties"[139] and tasks a court with considering "the totality of the circumstances."[140] Cannon fails to meet his burden of demonstrating Section 4121(u) is unconstitutional under either plain error or *de novo* review.

A. Cannon Fails to Show that the Superior Court Committed Plain Error by Not *Sua Sponte* Declaring Section 4121(u) Unconstitutional as Applied to Him.

Plain error applies where an appellant has failed to fairly present an argument to the trial court,[141] such as the constitutional claim Cannon raises now.[142] As this Court has recently explained, "[t]o consider issues under plain error review, four questions must be answered."[143] They are as follows: (1) "is the record adequate"; (2) "was there an error"; (3) "was the error plain";' and (4) "did the error adversely affect the substantial rights of the party."[144] Cannon bears the burden of establishing

[139] *Id.* (quoting *Chandler v. Miller*, 520 U.S. 305, 313 (1997))
[140] *Id.* (quoting *Grady v. North Carolina*, 575 U.S. 306, 310 (2015)).
[141] *Suber v. State*, 2026 WL 184867, at *4 (Del. Jan. 15, 2026).
[142] When identifying where in the record this claim was preserved as required by this Court's rules, Cannon cites to "A288-293." Am. Op. Br. at 10 n.34; Del. Sup. Ct. R. 14(b)(vi)(A)(1). *Amicus*'s appendix ends at A88, well short of that page number. The citation to A288-293 appears to be a scrivener's error and carried over from the last time this matter was briefed before this Court in *Dammeyin Johnson v. State*, 269, 2021.
[143] *Suber*, 2026 WL 184867, at *5.
[144] *Id.* at *5-6.

that the answer to each is "yes."[145] Cannon has not and cannot meet his burden because the answer to each is negative.

First, the record is inadequate. This Court has previously declined to review an as-applied challenge when the record was insufficient in *Johns v. State*.[146] There, the record was devoid of information regarding the hearsay statements at issue.[147] That made it impossible to know whether a hearsay exception applied.[148] Here, the record is devoid of information regarding any components of the Special Needs Doctrine as applied to Cannon. *Doe* provides a useful counterpoint with the record there consisting of pleadings, depositions of State personnel, and the deposition of an expert.[149] Nothing comparable exists here.

The second question of whether there is error is addressed below,[150] and so the State turns to the third question of whether the error is plain. A plain error is one "under current law."[151] That is, an error cannot be plain "if neither this Court nor any other binding authority (which includes the United States Supreme Court) has

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[145] *Id.* (explaining the proponent of the claim subject to plain error review bears the burden).
[146] *Johns v. State* , 2025 WL 3637521 (Del. Dec. 16, 2025); *Suber*, 2026 WL 184867, at *5-6 (explaining *Johns* "declin[ed] to review as-applied constitutional challenge when [the] record was insufficient").
[147] *Johns*, 2025 WL 3637521, at *7-8.
[148] *Id.*
[149] *Doe*, 143 A.3d at 1268 n.1.
[150] *Infra* II.B.
[151] *Suber*, 2026 WL 184867, at *5.

definitively ruled on the issue, and if other courts are divided."[152] For example, in *Johns*, this Court found no plain error "because there [was] virtually no case law addressing" the constitutional claim at issue.[153] Beyond cases for general constitutional principles (which are not in dispute), Cannon cites only to *Doe*.[154] And *Doe* does not, according to Cannon, govern the claim before this Court.[155] Accordingly, Cannon provides no binding authority that has ruled Section 4121(u) unconstitutional as applied to Cannon, which means the error (if one exists) cannot be plain.

Last, the imposition of GPS monitoring did not affect a substantial right. To do so, "the error must 'be so clearly prejudicial as to jeopardize the fairness and integrity of the trial process.'"[156] Structural constitutional errors result in the presumption of prejudice; Cannon's challenge to GPS monitoring is not one.[157] Other errors, like Cannon's, require a litigant show a reasonable probability of a different outcome in the absence of the error.[158] Here, nothing about Cannon's constitutional claim regarding GPS monitoring during probation impacts the trial

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[152] *Id.* (quoting *Johns*, 2025 WL 3637521, at *9) (cleaned up).
[153] *Johns*, 2025 WL 3637521, at *9.
[154] Am. Op. Br. at 21-26.
[155] *Id.* at 23 (distinguishing *Doe* from the current case because the plaintiffs there were on probation for the offense that resulted in their registry requirement).
[156] *Suber*, 2026 WL 184867, at *6 (quoting *Johnson v. State*, 813 A.2d 161, 165 (Del. 2001)).
[157] *Id.* at *6 n.32 (citing and explaining decisional law on structural error).
[158] *Id.* at *6.

process's fairness or integrity. Nor has Cannon shown that a different result was reasonably likely. And doing so would be particularly difficult insofar as probation or the trial court could have imposed GPS monitoring at their discretion.[159]

B. Cannon Fails to Show Section 4121(u) Is Unconstitutional Under *De Novo* Review.

Even if this Court reviewed Cannon's constitutional claim *de novo*, the claim would still fail. Cannon argues the Special Needs Doctrine applies to Section 4121(u) and that Section 4121(u) is unconstitutional under that test.[160] While he concedes that *Doe* addressed a similar issue, Cannon argues that *Doe*'s conclusions regarding Section 4121(u) and the Special Needs Doctrine do not apply.[161] That argument is unavailing. For the reasons set forth in that opinion, Section 4121(u) as applied to Cannon is constitutional.

1. *Doe*'s Conclusions Regarding the Nature of the Privacy Interest Apply to Cannon.

In addressing the first prong of the Special Needs Doctrine, Cannon explains *Doe* relied on the plaintiffs in that case voluntarily accepting GPS monitoring as a condition of probation in order to avoid more prison time and that they lacked a

[159] 11 *Del. C.* § 6502; *Dordell v. State*, 2004 WL 1277160, at *1-2 (Del. Apr. 1, 2004) (holding that probation officer had statutory authority under 11 *Del. C.* § 6502 to impose special conditions of probation); *Phoenix v. State*, 2003 WL 21991655, at *1 (Del. Aug. 19, 2003) (recognizing that the Superior Court has authority to impose wide range of specific conditions of probation).
[160] Am. Op. Br. at 22.
[161] *Id.* at 22-23.

reasonable expectation of privacy as a result.[162] Cannon contends that this does not apply to individuals like him insofar as the "exchange of prison time for onerous probation with GPS monitoring is in the past."[163] While Cannon concedes that the sex offender registry requirement imposes an intrusion on his privacy interest, he reasons that a Tier III sex offender otherwise "has an expectation of privacy that society would recognize as legitimate."[164]

Cannon's argument seems to be that, in the absence of probation, a Tier III sex offender has a cognizable expectation of privacy. That may be so. But Cannon is on probation. Although a more developed record would be helpful here,[165] Cannon, presumably like the plaintiffs in *Doe*, accepted GPS monitoring as a condition of probation to avoid more prison time. The sole difference between Cannon and the plaintiffs in *Doe* is whether their probation was for the qualifying offense or a subsequent one. For purposes of *Doe*'s analysis of the nature of the privacy difference, this is a distinction without a difference. The salient fact is that Cannon, like the *Doe* plaintiffs, is on probation. He, accordingly, lacks the "expectation of privacy that society would recognize as legitimate" just as the

[162] *Id.* at 23-24.
[163] *Id.* at 23.
[164] *Id.* at 24.
[165] *See supra* II.A.

plaintiffs in *Doe*.[166] *Doe*'s conclusion as to the nature of the privacy interest at issue under the Special Needs Doctrine therefore applies to Cannon.

2. *Doe*'s Conclusions Regarding the Character of the Intrusion Apply to Cannon.

Cannon takes no issue with *Doe*'s conclusion regarding the second prong of the Special Needs Test, the character of the intrusion, identifying it as "sound."[167] The *Doe* court concluded that GPS monitoring represented an incremental imposition that was not unduly burdensome;[168] Cannon argues, however, that because the rationales underlying that conclusion do not apply to him, then neither can the conclusion.[169] He identifies two such rationales.[170] The first is that while GPS monitoring of sex offenders represents a significant intrusion, it is only an "incremental imposition" in light of the other requirements imposed on sex offenders.[171] The second is that probation with GPS monitoring reflected less of an intrusion than being in prison.[172] Cannon asserts that *Doe*'s rational "makes no sense

[166] *Doe*, 143 A.3d at 1275.
[167] Am. Op. Br. at 24.
[168] *Doe*, 143 A.3d at 1276.
[169] Am. Op. Br. at 24.
[170] *Id.*
[171] *Id.* (quoting *Doe*, 143 A.3d at 1276).
[172] *Id.*

as applied to subsequent probations."[173] And he argues that it "is grossly disproportionate for any sentence other than the one originally imposed."[174]

Cannon is incorrect that the rationales underlying *Doe*'s conclusion as to the second prong of the Special Needs Doctrine do not apply to him. Take the first rational, that GPS monitoring represents an incremental intrusion when compared to the other intrusions imposed on sex offenders. *Doe*'s explanation here applies with equal force to Cannon: (1) the monitoring does not occur within homes; (2) probationers can bathe and swim while wearing the monitors; and (3) any embarrassment is lessened by notification and registry requirements imposed on Tier III sex offenders.[175] Nothing within that rationale hinges on the probation at issue being for the offense that resulted in the registry requirement. Likewise, GPS monitoring being less intrusive than prison is just as applicable to Cannon as it is to the plaintiffs in *Doe*.[176] Because both rationales *Doe* uses to reach its conclusion as to the Special Needs Doctrine apply to Cannon, so too then does *Doe*'s conclusion: "The incremental imposition into Plaintiffs' privacy caused by Section 4121(u)'s GPS monitoring requirement, therefore, is not unduly burdensome."[177]

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[173] *Id.*
[174] *Id.*
[175] *Doe*, 143 A.3d at 1276.
[176] *Id.*
[177] *Id.*

3. *Doe*'s Conclusions Regarding the Nature and Immediacy of the Government Concern and the Efficacy of Meeting It Apply to Cannon.

As to the last prong of the Special Needs Doctrine, Cannon concedes that *Doe* found that GPS monitoring "has at least some benefits" insofar as it reduces "the risk of harm and recidivism by Tier III sex offenders."[178] However, as applied to Cannon, he contends that there is no "immediate, or even legitimate, concern in monitoring Tier III sex offenders who have completed their probationary sentences [for the underlying offense]."[179] Cannon reasons that imposing GPS monitoring only while sex offenders are on probation may leave gaps in time where Tier III sex offenders go unmonitored by GPS.[180] He identifies his own case as an example.[181] Cannon was not subject to GPS monitoring for the initial offense (as Section 4121(u) had not been passed).[182] And he concludes that there is no reason to do so now because he has not become more dangerous or likely to recidivate than before his placement on probation.[183]

Cannon's argument here errs because it focuses on whether he has become more dangerous or likely to recidivate by being placed on probation. But that is not

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[178] Am. Op. Br. at 25 (quoting *Doe*, 143 A.3d 1277).
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.* at 25-26.

the relevant change. To the contrary, the relevant change is the lowering of Cannon's expectations of privacy when he was placed on probation.[184] This is the critical difference because it changes the balancing of the interests. When off probation, Tier III sex offenders have privacy interests that may not be outweighed by recidivist concerns. But while on probation, their privacy interests are lowered and no longer outweigh "the Delaware government's legitimate interest in reducing sex offender recidivism."[185] This is the conclusion *Doe* reached, and this Court affirmed. It applies equally here.

[184] *See McAllister*, 807 A.2d at 1125-26 ("Given the totality of the circumstances, including McAllister's status as a probationer and his limited privacy rights resulting therefrom, the officers' use of the key to open the locked door was reasonable and did not contravene the Fourth Amendment.").
[185] *Doe*, 143 A.3d at 1279.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

/s/
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Dated: April 17, 2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALTON CANNON,	)	
	)	
Defendant-Below/Appellant,	)	
	)	**No. 425, 2025**
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below/Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using MS Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 9,995 words, which were counted by MS Word.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/
Jordan A. Braunsberg (No. 5593)
Deputy Attorney General

DATE: April 17, 2026

EFiled: Jan 22 2026 02:47PM EST
Filing ID 78267634
Case Number 311,2025

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
v.	)	ID Nos.[1] 1704012804
	)	2111008670
ALTON CANNON	)	
	)	Supreme Court Case No. 311, 2025
Defendant.	)	

ORDER

By Order dated October 30, 2025, the Delaware Supreme Court remanded this case to the Superior Court for the limited purpose of conducting an evidentiary hearing to address Alton Cannon's request to proceed *pro se*.[2] As directed, this Court held an evidentiary hearing on January 22, 2026.[3] After responding to

[1] Cannon was tried and convicted in the Superior Court for charges filed under case numbers 1704012804 and 2111008670. Docket items from these cases are distinguished by including a parenthetical reference to the year of the case (i.e. D.I.(17) XX).

[2] Since the Supreme Court's remand, Cannon has filed a "Motion to Certify Order for Interlocutory Appeal," D.I.(17) 59; D.I.(21) 82, a "Motion to Quash Subpoena," D.I.(17) 60; D.I.(21) 83, and a "Motion for Substitution of Parties." D.I.(17) 62; D.I.(21) 85. This Court will not address these filings while Cannon's cases proceed in the Supreme Court. Should Cannon wish to pursue relief in this Court after the conclusion of his appeals, he may do so at that time. Because Cannon appeared for the January 22, 2026, hearing, his "Motion to Quash Subpoena" is moot.

[3] Upon receipt of the Supreme Court Order, this Court convened an evidentiary hearing on November 21, 2025; Mr. Cannon failed to appear for that event and this Court directed that Mr. Cannon be personally served with notice of the hearing. D.I.(17) 55; D.I.(21) 78. After some effort, on December 19, 2025, a New Castle County Deputy Sheriff successfully personally served Mr. Cannon with notice of the January 22, 2026, hearing. D.I.(17) 58; D.I.(21) 81.

Ex. A

Cannon's inquiries and conducting a colloquy addressing the factors identified in *Watson v. State*,[4] the Court makes the following findings:

1. The Court provided Cannon with a copy of the Delaware Supreme Court's order on remand and, after reviewing the document and addressing any questions to the Court, Cannon understood the purpose of the hearing was to address his request to proceed *pro se* before the Delaware Supreme Court. To the extent Cannon expressed a desire to abandon or dismiss his appeal in Case No. 311, 2025, Cannon understands that he must file an appropriate pleading in the Delaware Supreme Court.

2. Cannon has not retained private counsel and does not intend to do so. Throughout the colloquy, Cannon expressed his desire to terminate his appeal in Case No. 311, 2025.

3. Cannon has been deemed indigent by the Office of Defense Services ("ODS"). Counsel from that office served as counsel or standby counsel throughout Cannon's cases in this Court and on appeal to the Delaware Supreme Court. Cannon understands that he has the right to receive representation from ODS to assist him in his appeal. Cannon further understands that, because he is indigent, he must either accept representation from ODS or represent himself on appeal. He expressed a strong desire to represent himself.

[4] 564 A.2d 1107 (Del. 1989).

Ex. A

4. Cannon completed two years of college study in the field of Business Administration.

5. Cannon expressed a high level of familiarity with the criminal justice system, noting that he has been addressing matters within this system for over 30 years. Furthermore, Cannon expressed familiarity with the criminal trial process. He informed the Court that he represented himself in Superior Court trials before Judge Wharton several years ago, and before this judicial officer in 2025 in the matters on appeal.

6. Cannon has not consulted with any other person in making his decision to waive his right to counsel. He informed the Court that this was his decision and, in no uncertain terms, expressed his desire to represent himself.

7. Cannon understands that the appellate process involves the application of rules of procedure that may be difficult for a non-lawyer to follow or understand.

8. Cannon understands that, even though he is not a lawyer, the Delaware Supreme Court will require him to comply with and adhere to all pertinent rules.

9. Cannon understands that his failure to comply with or adhere to Supreme Court rules may delay or prejudice his appeal (including the possibility of dismissal).

10. Cannon understands that it is within the discretion of the Supreme Court to allow oral argument in any case and that it is that Court's practice to not grant oral argument to self-represented litigants in criminal cases.

11. Cannon understands that, if permitted to represent himself, he will not be permitted to interrupt or delay the appellate process to secure the assistance of Court-appointed counsel.

12. Cannon understands that the request he presented to the Court to proceed *pro se* is final, and that if the Court granted his request, he would not be permitted to change his mind at a later time.

13. The Court finds that Cannon's request to represent himself before the Delaware Supreme Court is made knowingly, intelligently, and voluntarily.

IT IS SO ORDERED.