

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

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-644

COMMONWEALTH

vs.

CAESAR J. DELGADO.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

This is an appeal from the order denying the defendant's Mass. R. Crim. P. 30 (a), as appearing in 435 Mass. 1501 (2001), motion seeking relief from confinement on the grounds that continued incarceration during the COVID-19 pandemic constitutes cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States and art. 26 of the Declaration of Rights.² The defendant, who suffers from

¹ Although the indictments list the defendant's name as Julio Ayala, we understand that he legally changed his name to Delgado.

² This appeal does not involve a motion for stay of execution of sentence pending appeal. See Mass. R. A. P. 6, as appearing in 481 Mass. 1608 (2019). The sixty-day period for filing a motion under Mass. R. Crim. P. 29, as appearing in 474 Mass. 1503 (2016), has elapsed. There is no pending motion for new trial and the defendant does not challenge the underlying conviction, rendering this appeal distinguishable from the narrow class of cases where a stay of execution of sentence is reviewed in the context of the validity of the conviction in question. See Commonwealth v. Charles, 466 Mass. 63, 72 (2013). See generally

several health conditions, including asthma,³ contends that his confinement at the North Central Correctional Institution at Gardner (NCCI-Gardner) places him at serious risk of infection and death from COVID-19, and that his confinement violates the above-referenced constitutional rights. He also asserts due process claims and a request for habeas corpus relief based on the constitutional violations alleged. A judge of the Superior Court denied his motion on June 3, 2020. We affirm.

The substantive arguments presented by this appeal are governed in all material respects by Commonwealth v. Foster (No. 1), 484 Mass. 698 (2020).⁴ Passing on the question whether a motion brought pursuant to rule 30 (a) is the appropriate vehicle for challenging the terms of confinement, rather than the legality of a sentence, we conclude that the motion judge did not abuse his discretion in denying the motion. In Foster (No. 1), supra at 716-724, the Supreme Judicial Court concluded that the plaintiff prisoners did not establish a likelihood of success on the merits that conditions of incarceration at any of the facilities in the Commonwealth presently violated the Eighth

Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Court, 484 Mass. 431, S.C., 484 Mass. 1029 (2020).

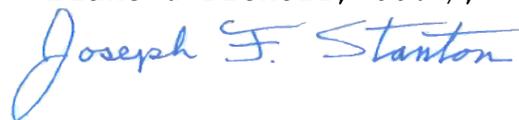
³ As well as sleep apnea, high cholesterol, and chronic pain syndrome.

⁴ Upon receipt of this request for expedited appeal, the panel requested supplemental briefing on the application of Foster (No. 1), which was decided after briefing in the Superior Court.

Amendment to the United States Constitution, or arts. 10, 11, or 26 of the Massachusetts Declaration of Rights.⁵ In so ruling, the Supreme Judicial Court considered the same arguments made here regarding the close quarters in barracks-style housing at NCCI-Gardner, the density of the sleeping arrangements, the ability to engage in physical distancing, and the risk of transmission.⁶ See Foster (No. 1), supra. For the same reasons articulated in Foster (No. 1), we conclude that the motion judge did not err in denying the motion.

Order denying motion for
relief from confinement
affirmed.

By the Court (Sullivan,
Blake & Ditkoff, JJ.⁷),



Clerk

Entered: June 26, 2020.

⁵ For the same reasons, we deny the request for habeas corpus relief and reject the defendant's claim of due process violations.

⁶ At the time this case was decided, 929 inmates and fifty-five guards had been tested at NCCI-Gardner and none tested positive for the virus. See special master report of May 26, 2020, <https://www.mass.gov/service-details/committee-for-public-counsel-services-v-chief-justice-of-the-trial-court-sjc-12926> [<https://perma.cc/GE2D-XQEN>].

⁷ The panelists are listed in order of seniority.