

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 7

November 30, 1977

SEARCH OF PAROLEE OR PROBATIONER WITHOUT A WARRANT

Reference: Robert L. ROMAN
v.
State of Alaska

Alaska Supreme Court
File No. 2856
570 P.2d 1235
Opinion No. 1521
November 10, 1977

FACTS:

ROMAN was on parole for possession of heroin. On November 7, 1975, his parole officer initiated a parole-revocation hearing. The Parole Board continued ROMAN on a parole status, but as a further condition of his parole ordered that he ". . . submit your person, vehicle and dwelling to a search for contraband on demand by any parole officer or peace officer". Although ROMAN had been present, the conditions were not signed by him and arrangements were made to have him sign them later. On November 11, 1975, the parole officer received information from a Federal Narcotics officer that ROMAN had used heroin on the previous evening. The parole officer also learned that ROMAN was suspected of selling heroin, but a "buy" had fallen through. The parole officer learned that ROMAN would be leaving the Fairbanks airport for his job on the North Slope and, in the company of another parole officer, went to the airport to contact ROMAN. At the airport, a Security Police officer was asked to assist and ROMAN was contacted.

ROMAN went with the officers to the men's restroom where he was requested to sign the stipulations of his release; he did so. He was requested to cooperate in a search and initially did; but, when the parole officer found a package of heroin, ROMAN began to fight. More narcotics were found and he was subsequently arrested and convicted. He appealed to the Supreme Court alleging the search and seizure was illegal.

ISSUE:

Can the parole officer, under the direction of the Parole Board, search the parolee without a search warrant?

HELD: Yes.

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Can a police officer make the same search if he is not directed by the parole officer?

HELD: No.

REASONING:

1. Conditions of parole authorizing searches must be specified by the Parole Board and not left to the discretion of the individual parole officers. The Parole Board is more "detached" from the parolee. In the case of the "person on probation", the judge will order such conditions when he issues the sentence.
2. Warrantless searches of parolees or probationers and their residences should not be countenanced unless there is a direct relationship of the searches to the nature of the crime for which the parolee was convicted.
3. Parolees have a diminished expectation of privacy, but the parolee should have the right to be heard before conditions are imposed by the judge or the Parole Board.
4. The parolee/probationer will be "protected from undue harrassment" if conditions are set forth by the judge or the Parole Board.
5. The right to perform such searches is limited to parole officers and peace officers acting under the direction of the parole officer.

NOTES:

This case sets forth guidelines which are to be followed by parole officers. The "search" condition must be ordered by the Parole Board or, in the case of probation, the judge. The defendant must be present when this condition is given and have the opportunity to speak against the condition. The only person entitled to make the search is the parole officer.

The parole officer is interested in the rehabilitation of the offender as well as the protection of society. The parole officer will not make a search of the offender for harrassment or make an exploratory search. The parole officer will have some information from which he will be able to justify the search. He does not need "probable cause" to make an arrest, but the information must be reliable. The search can be conducted by one other than the parole or probation officer (i.e. a police officer) so long as it is done at the direction of the parole/probation officer.

The judge or Parole Board will not be authorized to make a "search condition" on inappropriate cases. In other words, if narcotics, weapons, etc., were used in the original offense, this will be permissible. If, on the other hand, the offender is convicted of traffic manslaughter, it would be "unreasonable" to make a search of his person a condition of release.