





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 270
August 24, 2003

FIFTH AMENDMENT CAN BE INVOKED DURING SEX-OFFENDER TREATMENT PROGRAM

Reference: Daryle D. James

v.

State of Alaska

Alaska Court of Appeals

Opinion No. 1893

_____P.2d__

August 8, 2003

FACTS:

James was convicted of sexual assault in the second degree and sentenced to serve ten (10) years with four (4) years suspended. As a condition of his four-year suspended sentence, the court ordered that he must participate in a sex-offender treatment program while incarcerated.

John Dempsy, a clinical social worker who worked with convicted sex offenders for the Department of Corrections, testified that when he asked James about what he had done, James said, "I've invoked the Fifth Amendment; I'm not going to talk about any of this because basically I didn't do it and I'm under appeal."

Dempsy further testified that, when he interviews defendants to evaluate them for treatment, the <u>defendants'</u> statements are not confidential and he shares any information he obtains with the probation office.

James argued that, if he was successful in his appeal, any statements he made to the social worker could be used at his subsequent trial and he could also possibly be charged with perjury.

ISSUE:

Did James have a Fifth Amendment right to refuse to discuss the offense for which he had been convicted?

HELD: Yes--requiring him to do so was an attempt to elicit testimonial evidence.

REASONING:

- 1. The Fifth Amendment of the United States Constitution protects a person in a criminal case from being compelled by the government to be a witness against himself.
- <u>2.</u> There is no question that requiring James to discuss the offense for which he had been convicted was an attempt to elicit testimonial evidence.
- <u>3.</u> James had testified at his trial that he did not commit the offenses for which he was convicted. Any statement James made during therapy admitting to the offense could be used by the State to prosecute him for perjury.
- $\underline{4.}$ Upholding James' exercise of his Fifth Amendment right might allow him to avoid sex-offender treatment, but that right must trump practical difficulties raised by the legitimate exercise of that right.

NOTES:

Compare this case with Minnesota v. Murphy, Legal Bulletin No. 80, where statement given to a probation officer regarding a prior homicide rape was ruled admissible.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P, "Right to Counsel and Waivers during Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 270 numerically under Section R of the manual.