



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 114
July 22, 1987

WARRANTLESS SEARCH OF PROBATIONER'S
RESIDENCE BY PROBATION OFFICER

Reference: Joseph G. Griffin
v.
Wisconsin

U. S. Supreme Court
55 USLW 5156 (No. 86-5324)
June 26, 1987

FACTS:

Griffin, who was on probation, had his home searched by probation officers acting without a warrant. A gun which was found served as the basis of Griffin's conviction of a State-law weapons offense. Wisconsin law places probationers in the legal custody of the State Department of Social Services and renders them "subject to ... conditions set by the.... rules and regulations established by the department." One such regulation permits any probation officer to search a probationer's home without a warrant as long as his supervisor approves and as long as there are "reasonable grounds" to believe the presence of contraband--including any item the probationer cannot possess under probation conditions.

In this case, a police detective received information from a source that there might be guns in Griffin's apartment. Three plain-clothes police officers accompanied probation officers to Griffin's apartment and the probation officers conducted the search which resulted in seizure of the gun. The warrantless seizure was upheld by Wisconsin court and Griffin appealed to the United States Supreme Court.

ISSUE:

Did the warrantless search conducted by the probation officer violate the Fourth Amendment?

HELD: No.

REASONING:

1. The search of Griffin's home satisfied the demands of the Fourth Amendment, because it was carried out pursuant to a regulation that itself satisfies the Fourth Amendment's reasonableness requirement under well established principals.

2. A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be "reasonable". We have permitted exceptions to the warrant requirement when "special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."

3. A warrant requirement would interfere to an appreciable degree with the probation system, setting up a magistrate, rather than the probation officer, as the judge of how close the supervision of the probationer should be. The delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct.

4. Unlike police officers who conduct ordinary searches, probation officers are required to have probationers' welfare particularly in mind.

5. The probation agency must be able to act based upon a lesser degree (i.e., probable cause) of certainty in order to intervene before the probationer damages himself or society. The agency must, also, be able to proceed on the basis of its entire experience with the probationer and to assess probabilities in light of its knowledge of the probationer's life, character and circumstances.

NOTES:

The court addresses several recent cases where they have permitted exceptions when "special needs," beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable; review of the following cases is recommended:

O'Connor v. Ortega, Legal Bulletin No. 111--government employers and supervisors may conduct warrantless, work-related searches of employees' desks and offices without probable cause.

New Jersey v. T.L.O., Legal Bulletin No. 90--school officials may conduct warrantless searches of some student property without probable cause.

Roman v. State of Alaska, Legal Bulletin No. 7--warrantless search of probationer conducted by the probation officer.

Minnesota v. Murphy, Legal Bulletin No. 80--statement given to probation officer without Miranda warnings.

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Add this case to Section N on page 11 of your "Contents" and to N-4 of "Text". File Legal Bulletin No. 114 numerically under Section R of the manual.