



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 208  
October 18, 1996

## LACK OF CONSENT TO PROBATION/PAROLE OFFICER NEGATES SEARCH OF PAROLEE'S PREMISES

Reference: Hurist Joubert  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1487  
P.2d  
October 11, 1996

### FACTS:

Joubert was on parole for burglary and theft offenses. One of the conditions of his release was that, upon request of a probation officer, he would submit to a search of his person, personal property, residence or any vehicle in which he may be found for the presence of contraband.

A probation officer received a telephone call from a person who reported that Joubert had been selling crack cocaine from his residence. Several days later, three probation officers and two police officers went to Joubert's residence. The probation officer knocked on the door which was answered by Joubert's adult daughter, Hedjewahl. She informed the probation officer that her father was not at home. One of the probation officers asked Hedjewahl if they could "have a look around." She allowed the probation officers to enter. Shortly thereafter, the two police officers knocked on the door and were allowed to enter by the probation officer.

Hedjewahl, who had her two small children with her, was directed to sit on a couch. She was not allowed to leave the residence or answer the telephone. The probation and police officers conducted a complete search of the residence. During the search, officers discovered a set of scales and a vial which tested positive for trace amounts of cocaine. Joubert was arrested and subsequently convicted for violations of his conditions of probation.

### ISSUE:

Was the probation officer required to notify Joubert before searching his home?

HELD: Yes.

**REASONING:**

1. The search conducted by the probation officers in this case was not authorized by Joubert's conditions of probation.
2. The language of the disputed provision (consent to search) allowing the probation officer authority to search is premised on Joubert's receiving notice of the intended search.
3. The search condition requires the probation officer to communicate in some way with the probationer before conducting a search. (emphasis added)

**NOTES:**

In this case, the court concluded that searches conducted by probation officers of a probationer or parolee as a condition of release is not authorized in his absence and without his knowledge.

Review of Roman v. State, Legal Bulletin No. 7, is recommended; this case describes conditions under which probation officers are allowed to search a probationer. Also, compare that case with Griffin v. Wisconsin, Legal Bulletin No. 114, concerning authorizing search of a probationer's residence as a condition of release. In Griffin, the defendant was on the premises during the search.

A review of Section B, "Consent," of your manual is also suggested.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:**

Add this case to Section N, "Warrantless Searches Conducted by Probation Officers or Private Persons," and Section B, "Consent," of your Contents and Text. File Legal Bulletin No. 208 numerically under Section R of the manual.