



## DPS TRAINING BULLETIN

**LEGAL BULLETIN NO. 303**

December 19, 2005

### SEARCH FOR DRUGS AS A CONDITION OF PROBATION

<b>Reference:</b>	State of Alaska	Alaska Court of Appeals
	v.	Opinion No. 2021
	Gavis V. Thomas	P.3d
		December 16, 2005

#### **FACTS:**

Thomas was on felony probation for first-degree vehicle theft and driving while intoxicated after consuming alcoholic beverages (not drugs). One of the conditions of probation required him to submit to searches for controlled substances. During one such search, a police officer found crack cocaine in Thomas's wallet and this led to the indictment of Thomas for fourth-degree controlled substance misconduct.

Thomas argued that the evidence (crack cocaine) should be suppressed because his prior convictions were for first-degree theft and driving while intoxicated after consuming alcohol (not drugs). He argued that the sentencing judge should not have imposed the search for drugs as a condition of his probation. He cited several Appellate Court decisions including Roman v. State, Legal Bulletin No. 7, wherein a sentencing judge should not require a probationer to submit to warrantless searches for drugs "unless there is a direct relationship of the crime for which the probationer was convicted."

#### **ISSUE:**

Can a sentencing judge impose a condition of probation allowing searches for drugs even though the defendant was not being sentenced for possession, use or sale of drugs?

**HELD:** Yes--if the judge can reasonably conclude that (1) the defendant had a problem with the abuse of controlled substances, and (2) continued use of controlled substances would impede rehabilitation or would contribute to renewed criminal behavior.

**REASONING:**

1. A condition of probation must be reasonably related to the rehabilitation of the offender and the protection of the public, and must not be unduly restrictive of the offender's liberty.

2. In this case, Thomas had been convicted of crimes in the past where pre-sentence reports (1993, 1997 and 2000) all show that Thomas had a history of drug use.

3. Even though Thomas's prior offenses were not drug offenses per se, the challenged condition of probation would be adequately grounded if, based on Thomas's record, the sentencing judge could reasonably have concluded that a condition of probation allowing drug searches would further both Thomas's rehabilitation and the protection of the public.

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