



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 229
September 29, 1998

WARRANTLESS SEARCH OF PROBATIONER'S RESIDENCE AS CONDITION OF PROBATION

Reference: State of Alaska
v.
Ann James and
Gregory James

Alaska Court of Appeals
Opinion No. 1602
P.2d
September 4, 1998

FACTS:

Gregory James was convicted of a drug offense in 1995 and placed on probation. One of the conditions of his probation stated that, "upon the request of a probation officer James must submit to a search of his person, personal property, residence or any vehicle in which he might be found, for the presence of contraband."

James' probation officer, accompanied by another probation officer, a police officer, a drug-detection dog and two dog handlers, went to James' residence on April 1, 1996. The probation officer informed James that she was there to conduct a "home visit." James told her that he did not want her to visit his home at that time. The probation officer could smell the odor of growing marijuana coming from within the residence.

James retreated into the house followed by the probation officer. The smell of marijuana was even stronger and the probation officer observed a closet covered with black visqueen. When asked, James admitted he was cultivating marijuana. A subsequent search resulted in the seizure of marijuana from the closet as well as the basement. Both Gregory James and his wife, Ann, were charged with growing marijuana for commercial purposes.

Gregory James argued that, although the Superior Court could revoke his probation for refusing to give consent to search his residence, the probation officer violated the search and seizure provisions of the federal and state constitutions when, having met with James' refusal, they searched his residence without a warrant.

Ann James asserted that, even though her husband was on probation, she retained her right to object to searches of her home, person and possessions.

ISSUE:

Under this provision (search as condition of probation), was James' probation officer authorized to conduct a warrantless search of his residence even when James refused to consent to the search?

HELD: Yes.

REASONING:

1. When a sentencing court orders a defendant to "submit" to warrantless searches at the request of a probation officer, this language expresses the concept that the court has authorized the probation officer to conduct a warrantless search even if the probationer refuses to consent at the time of the search. (emphasis added)

2. When the probationer is sharing living quarters with another person who is not subject to similar conditions, the probation officer and the people working under that officer's direction may search all parts of the premises that the probationer has common authority to use. (emphasis added)

NOTES:

Review of the following cases is recommended:

Roman v. State, Legal Bulletin No. 6--search of parolee by probation officer.

Milton v. State, Legal Bulletin No. 187--search of third party custodian's bedroom (no good).

Joubert v. State, Legal Bulletin No. 208--search of premises during absence of probationer (no good).

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section B, "Consent," and Section N, "Warrantless Searches Conducted by Probation Officers or Private Persons," of your Contents and Text. File Legal Bulletin No. 229 numerically under Section R of the manual.