

ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

July 7, 2010

4th Amendment Rights Limited for Probationers and Parolees

The 4th Amendment protections against unlawful search and seizure generally require a warrant grounded in probable cause prior to the search of a citizen's home. It has long been recognized that the broad protections of the 4th Amendment do not apply to those on probation or parole. The issue was addressed most recently in the New Mexico Court of Appeals case of *State v. Benavidez*.

In *Benavidez*, the defendant's parole officer visited the defendant's home for a parole visit. The parole officer knocked on the door repeatedly. The defendant would not answer the door. The parole officer saw the curtains in the defendant's bedroom moving. There was also a car in the driveway in which the parole officer had earlier seen the defendant driving. The parole officer called for police backup. Upon arrival, the officers kicked in the door. Upon searching the home, they found the defendant hiding under a bed. They also found meth and paraphernalia in the defendant's bedroom where he was found hiding.

The defendant was charged with possession of a controlled substance and drug paraphernalia. He entered a conditional plea to the charges reserving his right to appeal the constitutionality of the search and seizure. The defendant argued that the search and seizure was illegal and therefore the drugs and the paraphernalia should be suppressed. The court of appeals found the search and seizure to be lawful drawing upon abundant case-law supporting the search and seizure of the parolee's home.

The court indicated that probationers and parolees do not enjoy the same protections under the 4th Amendment as do ordinary citizens. The Court cited the interests in the State in supervising probationers/parolees which dictate a lesser expectation of privacy. In fact, probation and parole agreements require that the probationer/parolee submit to reasonable searches of his or her home. Thus, a search may be conducted for reasonable suspicion rather than the higher standard of probable cause that applies to ordinary citizens.

In this case, the Court found that the refusal of the defendant to open his door for his parole officer provided reasonable suspicion for the search. The refusal itself constituted a violation of the terms of parole which alone was sufficient grounds for the search. Based upon the Court's finding that the search and seizure were legal under the 4th Amendment, the defendant's appeal was denied.

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.albuquerquecriminallawyerblog.com/>