Recent Case Report

Samson v. California

(2006) __ U.S. __ [2006 WL 1666974]

ISSUE

May officers conduct parole searches even though the parolee is not suspected of a crime?

FACTS

A San Bruno police officer knew that Samson was on parole. He had also heard that a parolee-at-large warrant might have been issued for Samson's arrest. So when he spotted Samson walking down the street, he detained him and ran a warrant check. It turned out that Samson was not wanted.

Nevertheless, the officer decided to search him pursuant to the terms of parole. When the officer found a cigarette package in Samson's pocket, he opened it and found methamphetamine.

DISCUSSION

Samson contended the search was unlawful because the officer had no reason to believe he had committed a crime or was otherwise in violation of the terms of parole. Although California does not require that officers have any level of suspicion before they may conduct parole searches,[1] Samson urged the United States Supreme Court to rule that California's law is unconstitutional, that some level of suspicion ought to be required under the Fourth Amendment.

At the outset, the Court noted that parolees in California have very limited privacy rights when it comes to police searches. This is because California law expressly permits warrantless police searches of parolees, their homes, and property under their control.[2] And, as the Court pointed out, the law makes sure that every parolee is aware of it.[3]

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[1] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 753 ["[P]particularized suspicion is not required in order to conduct a search based on a properly imposed search condition"].

[2] See Pen. Code § 3067(a) ["Any inmate who is eligible for release on parole pursuant to this chapter shall agree in writing to be subject to search of seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause."]; *People* v. *Hunter* (2006) 140 Cal.App.4th 1147, 1152, ["A suspicionless parole search is constitutionally permissible because the parolee lacks a legitimate expectation of privacy, and the state has a substantial interest in supervising parolees and reducing recidivism."].

[3] Citing Pen. Code § 3067(a) [Court: "California law provides that every prisoner eligible for release on state parole 'shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with

The Court also noted that a restriction on parole searches would undermine California's ability to closely supervise its parolees. The need for such supervision is, said the Court, "overwhelming," especially considering California's appalling recidivism rate. According to the Court, recent figures show that "70% of the state's parolees reoffend within 18-months—the highest recidivism rate in the nation."[4] Not only do these figures give rise to "great safety concerns," they also demonstrate that "most parolees are ill prepared to handle the pressures of reintegration. Thus, most parolees require intense supervision."

An essential element of this "intense" supervision is the warrantless search condition. As the California Supreme Court explained in the related context of probation searches, "[A] probationer must thus assume every law enforcement officer might stop and search him at any moment. It is this thought that provides a strong deterrent effect upon the [probationer] tempted to return to his antisocial ways."[5]

In light of these concerns, the Court in *Samson* concluded that it would make no sense to impose further restrictions on parole searches.[6] Said the Court, "Imposing a reasonable suspicion requirement, as urged by petitioner, would give parolees greater opportunity to anticipate searches and conceal criminality." Accordingly, it ruled "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee."

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or without cause.'"]. ALSO SEE *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 668 ["[Search] conditions are now automatic, and imposed on every parolee."].

[4] Quoting from J. Petersila, *Challenges of Prisoner Reentry and Parole in California*, 12 California Policy Research Center Brief, p. 2 (June 2000). ALSO SEE *U.S.* v. *Crawford* (9th Cir. en banc 2004) 372 F.3d 1048, 1071 ["Parolees, like drunk drivers on our highways, are a discrete group that are a demonstrable menace to the safety of the communities into which they are discharged." Conc. opn. of Trott, J].

[5] *In re Tyrell J* (1994) 8 Cal.4th 68, 87. ALSO SEE *People* v. *Mason* (1971) 5 Cal.3d 759, 763 ["With knowledge he may be subject to a search by law enforcement officers at any time, the probationer will be less inclined to have narcotics or dangerous drugs in his possession."]; *People* v. *Reyes* (1998) 19 Cal.4th 743, 753 ["[T]he purpose of the search condition is to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches."]; *People* v. *Robles* (2000) 23 Cal.4th 789, 795 ["[P]robation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers."]; *In re Anthony S*, (1992) 4 Cal.App.4th 1000, 1002, fn.1 ["Being on probation with a consent search term is akin to sitting under the Sword of Damocles."]; *People* v. *Constancio* (1974) 42 Cal.App.3d 533, 540 [search conditions "minimize the risk to the public safety inherent in the conditional release of a convicted offender."].

[6] **NOTE**: California prohibits parole searches that are "arbitrary, capricious, or harassing." See *People* v. *Reyes* (1998) 19 Cal.4th 743, 754; *People* v. *Bravo* (1987) 43 Cal.3d 600, 610 ["A waiver of Fourth Amendment rights as a condition of probation does not permit searches undertaken for harassment or searches for arbitrary or capricious reasons."]; *People* v. *Cervantes* (2002) 103 Cal.App.4th 1404, 1408 ["It is only when the motivation for the search is wholly arbitrary, when it is based merely on a whim or caprice or when there is no reasonable claim of a legitimate law enforcement purpose, e.g., an officer decides on a whim to stop the next red car he or she sees, that a search based on a probation search condition is unlawful."].

COMMENT

Samson is a helpful case because it eliminates any uncertainty as to whether officers may conduct suspicionless parole searches. This uncertainty resulted from some decisions by the Ninth Circuit indicating that California's suspicionless parolee search law was unconstitutional. As the result of *Samson*, that confusion has been eliminated.

There is still some uncertainty, however, as to whether *Samson* also applies to probation searches. Under California law, both parole and probation searches may be conducted without reasonable suspicion.[7] Although the Court in *Samson* distinguished between parole and probation searches,[8] and although it noted that parolees have fewer privacy rights than probationers, there is nothing in the opinion to suggest that it would overturn California's law that reasonable suspicion is not required. POV

[7] See *In re Tyrell J.* (1994) 8 Cal.4th 68, 80 ["[A]n adult probationer subject to a search condition may be searched by law enforcement officers having neither a search warrant nor even reasonable cause to believe their search will disclose any evidence."]; *People* v. *Bravo* (1987) 43 Cal.3d 600, 607, fn.6 [reasonable suspicion requirement will not be implied]; *People* v. *Brown* (1987) 191 Cal.App.3d 761, 766 ["[T]o restrict warrantless probation searches to those situations where the probationer has engaged in conduct reasonably suggestive of criminal activity would render the probation order superfluous and frustrate its acknowledged purpose; i.e., to deter further offenses by the probationer and to ascertain whether he is complying with the terms of probation."].

[8] **NOTE**: Among other things, the Court said, "[P]arolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment." The Court also cited *U.S.* v. *Cardona* (1st Cir. 1990) 903 F.2d 60, 63 ["[O]n the Court's continuum of possible punishments, parole is the stronger medicine; ergo, parolees enjoy even less of the average citizen's absolute liberty than do probationers."].