

**IN THE COURT OF APPEALS OF IOWA**

No. 8-1034 / 08-0412  
Filed February 19, 2009

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**JAMES MAX OCHOA,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

Following the grant of discretionary review, the State seeks reversal of the  
district court's ruling that granted the defendant's motion to suppress.

**REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Mary Tabor and Cristen Douglass,  
Assistant Attorneys General, Michael J. Walton, County Attorney, and Alan  
Havercamp, Assistant County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, and Stephan Japuntich,  
Assistant Appellate Defender, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

**VOGEL, P.J.**

While on parole, James Ochoa was charged with possession of a controlled substance and unlawful possession of a prescription drug. Ochoa filed a motion to suppress, which alleged the search of his hotel room violated his state and federal constitutional rights to be free from unreasonable searches and seizures. The district court granted Ochoa's motion and the State sought discretionary review, which was granted by our supreme court. Because Ochoa's parole agreement stated he was subject to search, and thus he did not have an expectation of privacy, we agree with the State that the search of Ochoa's person and motel room did not violate his constitutional rights. We reverse and remand for further proceedings.

**I. Background Facts and Proceedings**

In July 2007, after having served a portion of his sentence for a felony conviction, Ochoa was notified that he was eligible for parole. However, prior to the Department of Corrections approving his parole plan, Ochoa was required to sign a parole agreement setting forth the conditions of his parole. One provision stated: "I will submit my person, property, place of residence, vehicle, [and] personal effects to search at any time with or without a search warrant, warrant of arrest or reasonable cause by any parole officer or law enforcement officer." Ochoa agreed to this and was subsequently released on parole.

On October 15, 2007, Officer Jereme Hatler of the Bettendorf Police Department stopped by the Traveler Motel to conduct a routine "business check" due to the motel's location in a high crime area. In talking with the desk clerk, Officer Hatler discovered that Ochoa was staying at the motel and was on parole.

Following a brief conversation with Ochoa outside Ochoa's motel room, Officer Hatler asked Ochoa for permission to search his room, based on his knowledge of Ochoa's status as a parolee and the terms of the typical parole agreement. Ochoa responded, "You're going to anyway." With that, Officer Hatler entered the motel room and found cocaine, drug paraphernalia, and unauthorized prescription medication.

The State charged Ochoa with possession of a controlled substance in violation of Iowa Code section 124.401(5) (2007) and unlawful possession of a prescription drug in violation of Iowa Code section 155A.21. Ochoa moved to suppress all the evidence obtained from the search. The district court granted the motion finding the search violated Ochoa's state and federal constitutional rights as there was no reasonable suspicion to support the search, no "voluntary consent," and Ochoa's parole agreement did not justify the search. See U.S. Const. amend. IV; Iowa Const. art. 1, § 8. The State was granted discretionary review by our supreme court and seeks reversal of the district court's ruling.

## **II. Scope of Review**

We review claimed violations of constitutional rights de novo in light of the totality of the circumstances. *State v. Brooks*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2009); *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007); see *Samson v. California*, 547 U.S. 843, 848, 126 S. Ct. 2193, 2197, 165 L. Ed. 2d 250, 256 (2006) ("[U]nder our general Fourth Amendment approach' we 'examine the totality of the circumstances' to determine whether a search is reasonable within the meaning of the Fourth Amendment." (quoting *United States v. Knights*, 534 U.S. 112, 118, 122 S. Ct. 587, 591, 151 L. Ed. 2d 497, 505 (2001))).

### III. Analysis

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures.<sup>1</sup> See *Terry v. Ohio*, 392 U.S. 1, 20, 88 S. Ct. 1868, 1879, 20 L. Ed 2d 889, 905 (1968) (stating the Forth Amendment imposes a general reasonableness standard upon all searches and seizures). In determining whether a search is reasonable, we assess, “on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” *Samson*, 547 U.S. at 848, 126 S. Ct. at 2197, 165 L. Ed. 2d at 256.

In Iowa, an inmate who is paroled remains under the supervision of the department of corrections and is required to abide by the terms and conditions of parole, which are set forth in a parole agreement. Iowa Code §§ 906.1, 906.5(4); Iowa Admin. Code r. 205.10.2(906), 205-10.3(906). The parole agreement must be signed by the inmate prior to the commencement of parole and include the standard conditions of parole and special conditions unique to the inmate, as well as providing “for a search process and procedure of the parolee.” Iowa Admin. Code r. 205-10.3(906). If a parolee violates the terms and conditions set forth in the parole agreement, his parole may be revoked and he would return to prison. Iowa Admin. Code r. 205.11.4(908), 205.11.5(908); see *Larsson v. Iowa Bd. of Parole*, 465 N.W.2d 272, 276 (Iowa 1991) (“Implicit in the grant of conditional

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<sup>1</sup> Although the defendant has made a parallel claim under Article I, section 8 of the Iowa Constitution, the defendant has not asserted that the state constitutional provision should be interpreted differently than the Fourth Amendment. As a result, for prudential reasons, we assume for the purposes of this case that the Iowa Constitution should be interpreted in the same fashion as its federal counterpart.

*Brooks*, \_\_\_ N.W.2d at \_\_\_ n.1 (citing *State v. Wilkes*, 756 N.W.2d 838, 842 n.1 (Iowa 2008)).

release on parole is the duty resting upon the parolee to abide by those conditions. The 'enforcement leverage' given correction officials 'derives from the authority to return the parolee to prison to serve out the balance of his sentence if he fails to abide by the rules.'" (quoting *Morrissey v. Brewer*, 408 U.S. 471, 478-79, 92 S. Ct. 2593, 2599, 33 L. Ed. 2d 484, 493 (1972))). Parole is not a right, but rather a privilege that allows an inmate to serve the remainder of his sentence outside of prison walls. See *Morrissey*, 408 U.S. at 478-79, 92 S. Ct. at 2599, 33 L. Ed. 2d at 493 ("The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abide by certain rules during the balance of the sentence."); *State v. Wright*, 309 N.W.2d 891, 894 (Iowa 1981) (stating a defendant does not have a constitutional right to parole); *State v. Cullison*, 173 N.W.2d 533, 542 (Iowa 1970) (Larson, J. dissenting) (discussing that a parolee is only permitted in good behavior to serve the remainder of his sentence outside of prison walls).

Prior to being paroled, Ochoa signed a parole agreement that set forth the terms and conditions of his parole. Ochoa agreed to the standard conditions, which included requirements that he: report to the District Department of Correctional Services immediately upon release; reside at a specified residence and not change his residence without the permission of a supervising officer; obey all laws and ordinances; notify his supervising officer of an arrest or citation within twenty-four hours; secure and maintain employment and notify his supervising officer of any change in employment; maintain contact with his supervising officer; and use his true name in all dealings. He also agreed to refrain from: traveling out of his county of residence without permission from his

parole officer; owning or possessing a firearm or dangerous weapon; and from associating with persons with criminal records or persons who are engaged in criminal activities. Ochoa agreed to special conditions, including: refraining from the use of alcohol or drugs; submitting to alcohol and drug monitoring; participating in substance abuse counseling; not entering taverns, liquor stores, or other establishments where the primary activity is the sale of alcoholic beverages; not associating with drug users or sellers and to avoid places where drugs are sold; and participating in the intensive parole supervision program. Additionally, and most pertinent to this appeal, Ochoa agreed to submit to a suspicionless search at any time by a parole or peace officer, agreeing to the following language: "I will submit my person, property, place of residence, vehicle, [and] personal effects to search at any time with or without a search warrant, warrant of arrest or reasonable cause by any parole officer or law enforcement officer."

Officer Hatler conducted the search of Ochoa's motel room based upon his knowledge of Ochoa's status as a parolee and the terms and conditions of parole. In *Samson v. California*, the United States Supreme Court examined a similar case, in which a parolee had agreed "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 or without cause" and subsequently, a police officer conducted a suspicionless search of the parolee. *Samson*, 547 U.S. at 846, 126 S. Ct. at 2196, 165 L. Ed. 2d at 255. The court noted that a parolee remains in the legal custody of the Department of Corrections and must comply

with all of the terms and conditions of parole.<sup>2</sup> *Id.* at 850-51, 126 S. Ct. at 2198-99, 165 L. Ed. at 258-59; See *Morrissey*, 408 U.S. at 478-79, 92 S. Ct. at 2599, 33 L. Ed. 2d at 493 (discussing typical terms and conditions of parole, which are substantial restrictions on a parolee’s activities). “The extent and reach of these conditions clearly demonstrate that parolees . . . have severely diminished expectations of privacy by virtue of their status alone.” *Samson*, 547 U.S. at 852, 126 S. Ct. at 2199, 165 L. Ed. 2d at 259. However, the “salient” factor was that “the parole search condition required inmates who opt for parole to submit to suspicionless searches by a parole officer ‘at any time.’” *Id.* (quoting *Knights*, 534 U.S. at 119, 122 S. Ct. at 591-92, 151 L. Ed. 2d at 505). The parolee had signed a written agreement; thus, the parolee was “unambiguously” aware of the condition and had accepted the condition. *Id.* The court concluded that under the totality of the circumstances, specifically that parole is “an established variation of imprisonment” and the plain terms of the parole search condition, the parolee “did not have an expectation of privacy that society would recognize as legitimate.” *Id.* In contrast, the State had a substantial interest in supervising

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<sup>2</sup> The terms and conditions of parole under California law are nearly identical to the terms and conditions of Ochoa’s parole agreement. The Supreme Court stated that the terms and conditions of parole included:

mandatory drug tests, restrictions on association with felons or gang members, mandatory meetings with parole officers. General conditions of parole also require a parolee to report to his assigned parole officer immediately upon release, inform the parole officer within 72 hours of any change in employment status, request permission to travel a distance of more than 50 miles from the parolee’s home, and refrain from criminal conduct and possession of firearms, specified weapons, or knives unrelated to employment. Parolees may also be subject to special conditions, including psychiatric treatment programs, mandatory abstinence from alcohol, residence approval, and “[a]ny other condition deemed necessary by the Board [of Parole Hearings] or the Department [of Corrections and Rehabilitation] due to unusual circumstances.” *Samson*, 547 U.S. at 851-52, 126 S. Ct. at 2199, 165 L. Ed. 2d at 259 (citations omitted).

parolees. *Id.* at 853, 126 S. Ct. at 2200, 165 L. Ed. 2d at 259-60. Thus, the Supreme Court held “that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee.” *Id.* at 857, 126 S. Ct. at 2202, 165 L. Ed. 2d at 262.

Ochoa asserts that reasonable suspicion is required for a search and relies, as the district court did, on *State v. Cullison*, 173 N.W.2d 533 (Iowa 1970). However, *Cullison* involved a defendant who was on parole and had signed a parole agreement, in which “he agreed to conduct himself honestly, obey the law, keep reasonable hours, refrain from excessive use of intoxicants, and remain at all times in Montgomery County.” *Cullison*, 173 N.W.2d at 534. The parole agreement was devoid of any provision requiring a parolee to submit to a suspicionless search. As the Supreme Court found in *Samson*, the “salient” factor is a parole condition that requires a parolee to agree to suspicionless searches, which was not a condition of parole in *Cullison*. *Samson*, 547 U.S. at 852, 126 S. Ct. at 2199, 165 L. Ed. 2d at 259. In contrast, Ochoa, as a condition of his parole, accepted and was unambiguously aware that he and his effects were subject to search at any time, with or without reasonable cause. As held in *Samson*, because Ochoa agreed to submit to suspicionless searches as a condition of parole, he “did not have an expectation of privacy.” *Id.* Therefore, Ochoa suffered no constitutional violation.

The district court erred in granting Ochoa’s motion to suppress. We therefore reverse and remand for further proceedings.

**REVERSED AND REMANDED.**