

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP3022-CR

Cir. Ct. No. 2008CF4109

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GREGORY M. HOLLOWAY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Gregory M. Holloway appeals a judgment convicting him of possession of THC with intent to deliver, as a second or subsequent offense, and possession of a firearm by a felon. He argues that the

circuit court should have suppressed evidence found in his home by his probation agent. We affirm.

¶2 The relevant facts are undisputed. Holloway has multiple convictions for offenses involving drugs and weapons. As pertains to this appeal, he was convicted in 1991 of possession of a controlled substance and illegal possession of a firearm. After serving the initial confinement portion of his sentence, he was released on extended supervision. Holloway's probation and parole agent, who had been supervising him for over a year, received an anonymous tip that Holloway had a nine millimeter firearm in the bedroom of his residence and a quantity of marijuana in another room of his residence. Holloway had tested positive for marijuana approximately three or four months before the agent received the tip. The agent detained Holloway and then searched his residence, finding a weapon, ammunition, marijuana, over \$15,000 in cash, a scale, and other drug paraphernalia.

¶3 Holloway contends the search violated his rights under the Wisconsin and United States constitutions to be free from unreasonable searches and seizures. Probation agents do not need probable cause to search the residence of a person under supervision. *State v. Hajicek*, 2001 WI 3, ¶36, 240 Wis. 2d 349, 620 N.W.2d 781. A probation agent "may search a probationer's residence without a warrant if the [agent] has reasonable grounds to believe that the probationer has contraband." *State v. Jones*, 2008 WI App 154, ¶9, 314 Wis. 2d 408, 762 N.W.2d 106; *see also* WIS. ADMIN. CODE § DOC 328.21(3)(a). Probation agents may conduct warrantless searches of the persons they are supervising because the agents must ensure "that the probationer observes the restrictions placed upon the probationer's liberty during the probation." *Hajicek*, 2001 WI 3, ¶36. "These restrictions are meant to assure that the probation serves

as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large.” *Id.* (citation omitted). The same principles apply to persons on parole and extended supervision. *See Jones*, 2008 WI App 154, ¶9.

¶4 We conclude that Holloway's agent had reasonable grounds to believe that Holloway had contraband in his residence. The agent had been supervising Holloway for over a year pursuant to a drug conviction and a firearm conviction, and knew that Holloway had several prior convictions involving drugs and weapons. The agent also knew that Holloway had tested positive for marijuana several months earlier while on supervision. The anonymous tip received by the agent involved the same illicit activities that Holloway had previously been involved in, and the tipster was very specific about what the agent would find and where the agent would find it. These circumstances provided reasonable grounds for the agent to search Holloway's residence for contraband.

¶5 Holloway contends that reasonable grounds did not exist because the agent was unable to verify the information provided by the anonymous tipster. He points to WIS. ADMIN. CODE § DOC 328.21(7), which lists factors an agent should consider in assessing whether there are reasonable grounds to believe a person under supervision has contraband. One of the factors listed is “the reliability of the information provided by an informant.” § DOC 328.21(7)(b). We reject this argument. The administrative rule does not require that an agent consider *all* of the factors listed in § DOC 328.21(7) to determine whether reasonable grounds exist for a search; it provides that an agent “shall consider *any* of the [factors]” (emphasis added). The factors include “[t]he activity of the [person under supervision] that relates to whether the [person] might possess contraband or might have used ... an intoxicating substance” and “[t]he need to verify compliance with rules of supervision and state and federal law,” all of which

played a role in the agent's decision to search Holloway's apartment. *See* § DOC 328.21(7)(e) and (i). The agent had reasonable grounds to search Holloway's apartment under the administrative rules even though the agent was unable to verify the information provided by the anonymous tipster.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

