What Level of Suspicion Is Required to Arrest for a Probation Violation?

Author : Jamie Markham

Categories : Search and Seizure, Sentencing, Uncategorized

Tagged as : arrest, fourth amendment, Jones v. Chandrasuwan, probation, probation violations

Date : June 1, 2016

There aren't very many federal cases about North Carolina probation. When we get one, I'm inclined to write about it. In *Jones v. Chandrasuwan*, __ F.3d __ (4th Cir. 2016), the Fourth Circuit announced a new rule about the level of suspicion required to arrest a probationer for a suspected probation violation.

Stanley Jones pled guilty to indecent liberties with a student in 2010. He was sentenced to 24 months of supervised probation and ordered to pay costs and a fine pursuant to a schedule set by his probation officer. He transferred supervision from North Carolina to Georgia under the Interstate Compact for Adult Offender Supervision.

As his probation neared completion, an administrative review by North Carolina revealed that Jones hadn't paid any of his money. A North Carolina officer eventually prepared a violation report, alleging the monetary violation. When mail to Jones's Georgia address was returned undelivered, the officer also alleged an absconding violation. The officer presented the violations to a North Carolina magistrate and obtained an order for arrest. Federal officials carried out the arrest in Georgia. The violations were dismissed when Jones paid his money—but not before he lost his job.

Jones filed a civil rights lawsuit against the North Carolina probation officers responsible for his case. He alleged that they violated his Fourth Amendment rights by seeking his arrest without reasonable suspicion or probable cause. The federal district judge granted summary judgment in favor of the defendant probation officers, concluding that the officers were entitled to qualified immunity. Jones appealed to the U.S. Court of Appeals for the Fourth Circuit.

To evaluate whether or not the officers violated Jones's Fourth Amendment rights, the appellate court first had to determine the scope of that right as applied to a probationer. Turns out that neither the Supreme Court nor the Fourth Circuit had previously determined what level of suspicion the Fourth Amendment requires before a probation officer may arrest a probationer.

In general, of course, the Fourth Amendment requires that officers have probable cause before making an arrest. But probationers' rights are diminished. Given their criminal history and the state's interest in reducing recidivism and promoting "positive citizenship" among supervisees, the Constitution might reasonably require less before a supervised offender may be arrested. Analogizing to *searches* of probationers (something I discussed tangentially in this prior post), which require no more than reasonable suspicion and arguably may be done with no suspicion at all, the court determined for the first time that probationers may be *arrested* upon mere reasonable suspicion of a violation.

That is a groundbreaking decision, in the sense that we didn't know what the constitution required before now. No North Carolina state court case had clearly addressed the question. In State v. Waller, 37 N.C. App. 133 (1978), the court of appeals noted a probable cause standard in the context of an arrested probationer, but the court was not called upon to decide whether a lower standard may have sufficed.

It turns out, however, that, *Jones* will not require any change in probation officer practice. First, federal appellate decisions are not technically binding on North Carolina's trial or appellate courts. State v. Adams, 132 N.C. App. 819 (1999). But more importantly, Community Corrections policy already requires that an officer have *probable cause* that

an offender has violated a condition of supervision before making an arrest. Community Corrections Policy § D.0403(a). So, DAC already requires more than what is minimally acceptable as a matter of federal constitutional law.

What is worth noting, however, is that the Fourth Circuit concluded that the probation officers in *Jones* did not even have *reasonable suspicion* of the monetary and absconding violations alleged against Mr. Jones. As to the monetary condition, the officers never properly established a written payment schedule for the $471.50 owed by the defendant. No written schedule, no enforceable condition, no reasonable suspicion. *See* State v. Boone, 225 N.C. App. 423 (2013).

As to the absconding, the North Carolina probation officers attempted to locate Jones via phone and mail, but they never did what was clearly required by their own policy and the Interstate Compact: contact the Georgia probation officials who were supervising Jones on North Carolina's behalf. With no communication with the office actually responsible for supervision, there could be no reasonable suspicion that Jones was avoiding supervision.

So, while *Jones* establishes a low level of suspicion for arrest of a probationer, the Fourth Circuit signaled that it will undertake a pretty demanding analysis of what facts will suffice to meet it. Officers and offenders alike will want to note that even more is required to meet the higher standard required by DAC's administrative policy. Ultimately, the officers here were found to have qualified immunity, as the scope of the defendant's Fourth Amendment rights was previously unclear. The *Jones* decision, however, is a step toward clear establishment of a standard that could expose officers to liability in a civil suit.