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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROMAN GALINDO CELIS,

Defendant and Appellant.

2d Crim. No. B266802
(Super. Ct. No. 2013010234)
(Ventura County)

Roman Galindo Celis was subject to postrelease community supervision (PRCS) when he was arrested. (Pen. Code, § 3451.) He had an informal probable cause hearing before a probation officer. Subsequently, the trial court found him in violation of PRCS. He contends, among other things, that the trial court erred because the PRCS revocation process violated his right to due process. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2013, Celis pled guilty to transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)), possession of a firearm by a felon (§ 29800, subd. (a)(1)), and being an accessory after the fact (§ 32). He was sentenced to five years eight months in state prison.

On February 17, 2015, Celis was released on PRCS.

On June 5, 2015, Celis was arrested for violating his PRCS terms.

On June 8, 2015, Probation Officer Jennifer Souza held a probable cause hearing and found probable cause that Celis violated his PRCS conditions. The probation officer's "written report for revocation" notes that Celis was informed of the violations, he refused a waiver offer, requested a court revocation hearing and was advised of his right to counsel.

On June 12, 2015, the Ventura County Probation Agency filed a petition to revoke PRCS and scheduled a hearing date for June 25, 2015.

On July 13, 2015, Celis filed a motion "to dismiss the petition." Citing *Williams v. Superior Court* (2014) 230 Cal.App.4th 636 (*Williams*) and *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*), he claimed the PRCS revocation procedure violated his due process rights. On the same date, the trial court denied the motion and found no violation of due process.

On July 16, 2015, the trial court held a PRCS revocation hearing. Celis submitted on the allegations of the petition. The court found the allegations in the petition "to be true." It ordered Celis to serve 170 days in the county jail with a credit of 84 days.

DISCUSSION

Celis contends, among other things, that 1) he did not have a probable cause hearing that complied with *Morrissey* standards, 2) the PRCS process does not comply with the procedures and time limits set forth in *Williams* for parole revocations, and 3) the PRCS probation officers do not conduct proper evidentiary hearings.

The PRCS procedures here did not violate Celis's equal protection or due process rights. (*People v. Gutierrez* (2016) 245 Cal.App.4th 393, 402-404; see also *People v. Byron* (2016) 246 Cal.App.4th 1009, 1014-1017.) After his arrest for violating PRCS conditions, Celis received a prompt probable cause hearing. (*Gutierrez*, at p. 402.) The PRCS hearing officers who decide probable cause are neutral decision makers. (*Morrissey*, *supra*, 408 U.S. at p. 485 ["someone not directly involved in the case"]; *Gutierrez*, at p. 402.) PRCS and parole procedures involve different types of offenders and different procedures. (*Gutierrez*, at pp. 403-404.) There are valid justifications for the different procedures. (*Ibid.*) Consequently, "there is no requirement that the PRCS

revocations and parole revocations use the identical procedure or timeline.” (*People v. Byron, supra*, 246 Cal.App.4th at p. 1017.) Celis relies on *Williams*. But “*Williams* is not a PRCS case and did not consider the due process requirements for a PRCS revocation.” (*Byron*, at p. 1016.) “The requirement for a formal arraignment in the superior court within 10 days of arrest, as discussed in *Williams*, does not apply to PRCS revocations.” (*Id.* at p. 1017.)

Celis contends: 1) he did not have adequate time to prepare for the probable cause hearing, 2) the notice of violations for that hearing was incorrect, and 3) the petition to revoke listed violations that were not the subject of the probable cause hearing.

But Celis did not raise these claims at the July 13th or the July 16th court hearings. At the first court hearing, Celis’s counsel raised general constitutional issues regarding PRCS, but not these specific procedural claims. Issues on appeal are forfeited where they were not initially raised in the trial court. (*People v. Vines* (2011) 51 Cal.4th 830, 867.) Moreover, as the People note, the record shows that Celis was informed of the violations, refused a waiver offer, requested a court revocation hearing, and was advised of his right to counsel. He signed a form indicating that he had been advised: 1) he had the right to “present letters and documents” at the probable cause hearing, 2) to speak on his “own behalf,” and 3) he would have “between 24 and 48 business hours to prepare [his] response.”

Celis contends he did not have adequate time to prepare for the probable cause hearing because it occurred on the same day he received the notice of his hearing rights. But he has made no showing that he ever needed or requested a continuance or what additional information he would have presented at a continued hearing. Celis presented no evidence in court to show how the alleged insufficient preparation time or notice inaccuracies either impaired his rights or would have changed the result. He did not present evidence showing that he did not commit the listed PRCS violations. He was represented by counsel at both the motion to dismiss hearing and the revocation hearing.

“The hearing on the motion to dismiss was *tantamount to a second probable cause hearing*.” (*People v. Byron, supra*, 246 Cal.App.4th at p. 1017, italics added.) It

allowed Celis the opportunity to raise any alleged deficiencies or unfairness occurring in the first probable cause hearing. The initial probable cause hearing was “the functional equivalent of an arraignment and a probable cause ruling.” (*Ibid.*) The revocation hearing gave him another opportunity to raise challenges to the probable cause hearing. Celis has not shown any due process infirmities. Moreover, “[a]ssuming, arguendo, that *Williams* applies to PRCS revocation hearings, appellant received functionally equivalent protections and any deviation in the timing or substance of the hearings was harmless beyond a reasonable doubt.” (*Ibid.*)

Celis claims the trial court erred because a petition alleging a violation of PRCS must be filed prior to seeking a signed waiver from a supervised person. But the statute does not place such a limit on when waivers may be requested. Penal Code section 3455, subdivision (a) provides, in relevant part, “*At any point during the process* initiated pursuant to this section, *a person may waive*, in writing, his or her right to counsel, admit the violation . . . , waive a court hearing, and accept the proposed modification of his or her [PRCS].” (*Italics added.*) Celis construes the phrase “at any point during the process” to mean that the filing of the petition to revoke PRCS starts the “process.” Under his construction, a waiver of rights may not occur before the petition is filed. We disagree.

Celis places the cart before the horse. The supervising agency may not file the petition to revoke PRCS until it first determines that intermediate sanctions are not appropriate. (§ 3455, subd. (a).) After the hearing officer decides probable cause exists for PRCS violations, the PRCS participant is given the opportunity to admit or deny the allegations, agree to proposed PRCS modifications and a waiver of his or her rights. (*Ibid.*) If the individual agrees to the modification, the matter “proceed[s] to court for the entry of the order of modification, but the supervised person is not required to attend the proceedings. Nothing in the statutory scheme would preclude the probation officer from preparing a ‘package’ for simultaneous filing, which would contain the petition, the executed waiver of appearance and admission, and the proposed order of modification.” (Couzens et al., *Sentencing California Crimes, Sentencing After Realignment* (Rutter 2015) § 11:86, pp. 11-141-11-142.) The statute is consequently permissive. It provides a

flexible method for PRCS participants and the probation department to quickly resolve disputes over PRCS compliance before a petition is filed in court. A waiver certainly impacts the PRCS participant's ability to challenge the alleged PRCS violations. But the issue about the validity of waivers that Celis claims are prematurely signed is not involved here because Celis did not sign a waiver. Nor has he shown how a probation officer's *unsuccessful attempt* to obtain a waiver violated his rights or would change the result.

Moreover, the denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless it results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) Celis makes no showing that a due process defect prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Moore* (1975) 45 Cal.App.3d 285, 294; see also *In re Winn* (1975) 13 Cal.3d 694, 698 [defendant has the burden of showing prejudice].) He was represented by counsel at the revocation hearing and he submitted on the allegations of the petition. He has served the custodial sanction. "[T]here is nothing for us to remedy" (*Spencer v. Kemna* (1998) 523 U.S. 1, 18.) We have reviewed his remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Donald D. Coleman, Judge
Superior Court County of Ventura

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