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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.

SAUNRAY WINCHESTER,

Defendant and Appellant.

2d Crim. No. B267878  
(Super. Ct. No. 2013036681)  
(Ventura County)

Saunray Winchester appeals from judgment after an order revoking his postrelease community supervision (PRCS). (Pen. Code, § 3450 et seq.)<sup>1</sup> He contends the revocation procedures employed by Ventura County violated his right to due process because he did not have a *Morrissey*-compliant<sup>2</sup> probable cause hearing. We affirm.

**FACTUAL BACKGROUND**

In 2014, Winchester was convicted after trial by jury of unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a)) and receiving a stolen vehicle (§ 496, subd. (a)) and a prison prior was found true (§ 667.5, subd. (b)). He was sentenced to three years state prison.

Winchester was released in 2015 on PRCS following realignment. The Ventura County Probation Agency is his supervising agency. As a condition of release,

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*).

he agreed to obey all laws, report to probation as directed, consent to drug testing, and not use or possess drugs or paraphernalia. He also agreed the probation agency could, without a court hearing, order “flash incarceration” in the county jail for up to 10 days if he violated the conditions of his release. (§ 3453, subd. (q).)

In July 2015,<sup>3</sup> Winchester absconded from probation. On July 31, he was arrested for resisting a peace officer. He was in possession of a methamphetamine pipe and psilocybin. This was his third violation of PRCS in three months.

Winchester was taken into custody on August 1. On August 4, Senior Deputy Probation Officer J. Souza met with Winchester. Souza advised him of his rights, including his right to counsel and a revocation hearing, and conducted an administrative probable cause hearing. Souza concluded there was probable cause to believe that he violated the terms of PRCS. Winchester refused to waive his rights and requested a formal revocation hearing.

On August 11, the probation agency filed a revocation petition. The hearing was set for August 20.

On the date of the hearing, Winchester moved (through counsel) to dismiss the petition for revocation and for release based upon an alleged violation of due process. The trial court denied the motion to dismiss and heard the revocation petition. Winchester submitted on the probation officer’s report. The trial court found him in violation of PRCS and ordered him to serve 90 days in county jail.

## DISCUSSION

### *Due Process Requirements*

Revocation of supervised release deprives a person of a conditional liberty interest, and may only be had with due process protections. (*Morrissey, supra*, 408 U.S. at p. 482 [parole revocation]; *People v. Vickers* (1972) 8 Cal.3d 451, 458 (*Vickers*) [probation revocation].)

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<sup>3</sup> All future dates are in the year 2015.

To conform to due process, revocation of conditional release requires a two-step process: (1) an initial determination of probable cause to justify temporary detention; and (2) a formal revocation hearing to determine whether the facts warrant revocation. (*Morrissey, supra*, 408 U.S. at p. 485; *Vickers, supra*, 8 Cal.3d at p. 456.) It is undisputed that the formal revocation hearing complied with *Morrissey* and *Vickers* in this case.

### *The Probable Cause Hearing*

The probable cause determination is a “minimal inquiry,” made near the place of arrest “as promptly as convenient after arrest.” (*Morrissey, supra*, 408 U.S. at p. 485.) It need not be made by a judicial officer; it may be made by any qualified person “not directly involved in the case.” (*Id.* at pp. 485-486 [probable cause determination for parole revocation may be made by a parole officer other than the officer who reports the violation or recommends revocation]; *Vickers, supra*, 8 Cal.3d at pp. 456-457.)

Winchester complains that the probable cause conducted by Souza was an “ex parte process carried out by a probation officer to secure a waiver of rights under section 3455, subdivision (a), and was not a true fact-finding probable cause hearing.” He argues that having a different probation officer than the one who drafted the report as a hearing officer “is immaterial” because “[b]oth probation officers are employed by an agency whose agenda is to obtain an early modification of supervision . . . .” But Winchester offers no evidence in support of his argument. He was present at the administrative hearing and notified of the violations. He was given the PROS Advisement of Rights and Acknowledgment Revocations form. The probable cause hearing was conducted after he was advised of his rights. There is no evidence that he disputed or contested probable cause.

*Morrissey* expressly allows the use of other supervising agency officers in the role of independent probable cause hearing officers: “It will be sufficient, therefore, in the parole revocation context, if an evaluation of whether reasonable cause exists to believe that conditions of parole have been violated is made by someone such as a parole officer other than the one who has made the report of parole violations or has

recommended revocation.” (*Morrissey, supra*, 408 U.S. at p. 486.) Here, a different probation officer reported the violations and recommended the custodial sanction.

Winchester claims that he did not have adequate time to prepare for the probable cause hearing. When the motion to dismiss was argued, he presented no evidence about what occurred at the probable cause hearing. Having failed to make an adequate record for review, he is precluded from speculating on matters outside the record. (*People v. Foss* (2007) 155 Cal.App.4th 113, 126-127 [offer of proof required to preserve issue on appeal].)

Winchester contends that the PRCS revocation procedure violates Proposition 9, the Victims’ Bill of Rights Act of 2008: Marsy’s Law, which created section 3044 and provides that a parolee is entitled to a probable cause hearing no later than 15 days following his or her arrest for violating parole. (See *Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 649-650.) This argument was not made to the trial court and has been forfeited. (*People v. Hartshorn* (2012) 202 Cal.App.4th 1145, 1151.) But even if not forfeited, we held in *People v. Byron* (2016) 246 Cal.App.4th 1009, 1017-1018, that PRCS is different from parole. Section 3044 does not apply to PRCS revocations which are governed by section 3455. Winchester’s argument that section 3455, as enacted as part of the 2011 Realignment Act, illegally “bypasses” Proposition 9 without a super majority vote of the Legislature is, therefore, without merit.

#### *Winchester Has Failed to Demonstrate Prejudice*

Winchester argues that his due process rights were violated at the probable cause phase, prior to the formal revocation hearing. He submitted at the revocation hearing and has served the custodial sanction (90 days county jail).

The denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless the violation results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) Winchester makes no showing that any due process defect prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Winn* (1975) 13 Cal.3d 694, 698 [defendant has burden of showing prejudice]; *In re Moore* (1975) 45 Cal.App.3d 285, 294.) Because he was found in violation and has

served the custodial sanction “there is nothing for us to remedy, even if we were disposed to do so.” (*Spencer v. Kemna* (1998) 523 U.S. 1, 18.)

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donald D. Coleman, Judge  
Superior Court County of Ventura

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Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

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