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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA  
SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARVIN R. CARRANZA,

Defendant and Appellant.

B269081

(Los Angeles County  
Super. Ct. No.

BA285769)

APPEAL from a judgment of the Superior Court of Los Angeles County, Henry J. Hall, Judge. Affirmed.

Melissa L. Camacho-Cheung for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Rene Judkiewicz, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant and appellant Marvin R. Carranza appeals from an order revoking his probation on November 17, 2015. Defendant argues that his right to due process was violated by an “egregious” delay between the summary revocation of his probation in 2009 and the service of the resulting bench warrant in 2015. We conclude there is no factual support for defendant’s allegation of purposeful delay in serving the bench warrant, and affirm the order revoking probation and ordering execution of a stayed state prison sentence.

## **FACTS AND PROCEDURAL SUMMARY**

On July 25, 2005, defendant pleaded no contest to assault with a firearm (Pen. Code, § 245, subd. (a)(2))<sup>1</sup> and admitted to personally using a firearm during the assault (§ 12022.5). On August 31, 2005, the trial court sentenced defendant to seven years in prison, suspended execution of the sentence, and placed defendant on three years of formal

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

probation with terms and conditions including obeying all laws, not associating with known members of the Crazy Riders gang, and reporting for probation. Defendant was explicitly reminded by the trial court of his duty to report to the probation department.

A minute order reflects that defendant was before the trial court, with counsel, on February 9, 2006. According to the minute order, “Defendant is admonished to report to probation once he is released from state prison” in a separate case.

The probation officer prepared a report for a hearing on March 26, 2007. The report states that defendant was convicted in federal court of “illegal entry” and sentenced to 27 months in federal prison in case No. CR06780. As requested by the probation officer, the trial court revoked probation and issued a no bail bench warrant.

On September 22, 2008, the trial court recalled and quashed the bench warrant. Probation was reinstated, with a notation in the minute order that “defendant will be deported.” Defendant was deported to Mexico on October 8, 2008. Defendant illegally reentered the United States on April 11, 2009.<sup>2</sup>

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<sup>2</sup> In a letter to the trial court, defendant claimed he contested his deportation and was held in federal immigration custody from September 23, 2008, until his deportation to Mexico on May 9, 2009. Defendant claimed he illegally reentered the United States on May 11, 2009, and was detained shortly thereafter. The letter did not

On May 26, 2009, the probation officer filed a report indicating defendant had been deported. The minute order reflects that defendant failed to appear without sufficient excuse. The court revoked probation and issued a bench warrant. The court's minute order stated the defendant had been deported.

On July 27, 2009, defendant was sentenced under the name "Marvin Rosa-Carranza" in the United States District Court for the Southern District of California to 57 months in federal prison upon his plea to "deported alien found in the United States." (8 U.S.C. § 1326.) Defendant's projected release date was July 10, 2015. Defendant served his federal sentence at the United States Penitentiary, Hazelton, in West Virginia. Defendant never reported his federal case or subsequent incarceration to his probation officer.

Los Angeles Police Department (LAPD) Officer Gilbert Rendon sent a letter to the United States penitentiary in Hazelton on June 10, 2015, notifying the federal authorities of the California warrant, requesting a detainer against defendant, and asking that authorities inform defendant of the detainer. On July 8, 2015, the Preston County Sheriff's Office in Kingwood, West Virginia, received a facsimile copy of the warrant for defendant's arrest as a fugitive, seeking his extradition to California upon his release from federal custody. The extradition hearing was scheduled for July 17,

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provide any official documentation of the deportation proceedings, nor did it include full documentation of his federal criminal case.

2015, in West Virginia.

On August 7, 2015, defendant appeared in the trial court in Los Angeles. A contested probation violation hearing was held on October 30, 2015, and November 18, 2015. Deputy Probation Officer Latonya Moore testified that defendant never reported to probation. On May 26, 2009, Moore tried to locate defendant by checking federal records, which indicated that defendant was in federal immigration custody. Moore called the Immigration and Naturalization Service, but was informed that defendant had been deported and was not in immigration custody. Deputy Probation Officer Sandra Saucedo testified that she received defendant's case and conducted an interview with him on September 3, 2015, in connection with his probation violation. Defendant became upset and ended the interview when Saucedo asked if he was arrested September 18, 2008, in San Diego. Defendant had not reported to probation since the court granted probation in 2005. Saucedo was aware defendant had been released from federal custody in 2008 and deported around May 9, 2009. She did not know where defendant had been, but he had reentered the country and did not report.

Called as a defense witness, defendant's sister, Yoni Viana, testified that LAPD Detective Mitchell and Officer Contreras knocked on her door in May 2009, "looking for" defendant. Viana told them defendant had been "detained by immigration in San Diego."

Following the completion of testimony, defense counsel

argued defendant had been in custody and unable to report to probation. The court noted defendant had reentered the country illegally, in violation of the probation condition requiring defendant to obey all laws. Defense counsel maintained, “the people here in the State of California, Los Angeles, County, were aware of his federal custody as early as a month after May of 2009, took no action to put a hold on him to bring him back to resolve this warrant, this case, and possible violation of probation, even though it was aware that he had been deported and L.A.P.D. was informed by Mr. Carranza’s sister that he was already in federal immigration custody.” Based on these facts, defense counsel argued defendant was subjected to violation of due process, double jeopardy, and his right to a speedy trial. Counsel argued that, at a minimum, defendant should receive credit against his state sentence for the time served in federal custody.

The trial court found defendant in violation of probation, making factual and legal findings. The court ruled, “[t]here’s no due process violation here. He repeatedly reentered the country. He’s been repeatedly detained. He has been repeatedly arrested. He’s been repeatedly convicted in federal court of immigration violations. He has never reported to probation. [¶] . . . [¶] Even if he had, the fact that he repeatedly reentered is a violation of probation. And there are provision[s] in the law that allow him to apply to have his probation violation matter resolved. He didn’t do that. [¶] . . . [E]ven though he had cases pending where he was going to go to federal prison he never made a demand or

request at that time to receive credit.” The court deemed it “unrealistic” to come in years later and seek custody credits. The court found “defendant in violation of probation after a contested hearing for failing to report and failing to obey all laws.” The court ordered execution of the previously stayed seven-year prison term.

## **DISCUSSION**

Defendant acknowledges he did not avail himself of the statutory procedure in section 1203a to notify the probation officer of his federal incarceration. He also concedes there is no evidence the probation officer was aware of defendant’s federal incarceration, which would have triggered a duty on the probation officer to report the incarceration to the trial court.

Defendant argues due process was violated because “the LAPD knew where he was prior to release,” and it “defies reason that LAPD happened to discover appellant’s incarceration two days before his release when a bench warrant had been issued six years prior, appellant was in federal custody for the entire time, on the same charge, under the same name.” Defendant further contends that because his sister testified that LAPD officers attempted to arrest him at her home in 2009, the LAPD, “as an arm of the state,” knew he was in federal custody years before his scheduled release, but did not notify defendant or the probation officer.

## **Standard of Review**

“We review the trial court’s probation revocation order for an abuse of discretion. [Citations.] The trial court’s factual findings are reviewed for substantial evidence. [Citations.]” (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318.) Issues of law are reviewed de novo. (*People v. Cromer* (2001) 24 Cal.4th 889, 893–894.)

## **Due Process in the Probation Revocation Procedure**

Probationers are entitled to due process protections prior to the revocation and termination of probation. (*People v. Vickers* (1972) 8 Cal.3d 451, 458–460 (*Vickers*).) Due process is a flexible concept that requires only those procedural protections the particular situation demands. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 481 (*Morrissey*).) The Sixth Amendment right to speedy trial is not implicated in post-conviction proceedings; post-conviction delay is reviewed to determine whether due process is violated. (*Betterman v. Montana* (2016) \_\_ U.S. \_\_, \_\_, 136 S.Ct. 1609, 1613.)

Section 1203.2a provides statutory protection for probationers committed to prison in another jurisdiction. Under the statute, the defendant may request sentencing in absentia, and strict time limits are placed on probation and the court to act upon a defendant’s request for sentencing. (*In re Hoddinott* (1996) 12 Cal.4th 992, 1005.) When an



absconding probationer incarcerated in another jurisdiction has not advised the probation department of his whereabouts, the probation department has no duty to take further action on a probation violation. (*People v. Madrigal* (2000) 77 Cal.App.4th 1050, 1053–1054 (*Madrigal*).) The state has no obligation to find an absconding probationer and “is not required to inquire at every state and federal prison to determine the whereabouts of an absconding probationer.” (*Id.* at p. 1054; *People v. Taylor* (1971) 14 Cal.App.3d 328, 332 [law enforcement officers have no duty to locate a probationer incarcerated elsewhere].)

There is no statutory time limit on when a probation revocation hearing must be held. Instead, due process requires that the probation revocation hearing be held “as promptly as convenient after arrest.” (*Morrissey, supra*, 408 U.S. at p. 485; *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782.) Due process does not require that a defendant profit when he “elects to escape the restraints imposed on his liberty.” (*Vickers, supra*, 8 Cal.3d at p. 460.)

### **Analysis of Defendant’s Due Process Contention**

Defendant contends the state knew he was in federal custody in May 2009. This is incorrect. Defendant was sentenced by the District Court of the Southern District of California on July 27, 2009. This occurred after the probation department inquired into defendant’s federal custody status on May 26, 2009, and after his sister told

LAPD officers in May 2009 that defendant had been “detained by immigration.”

The factual premise of defendant’s contention—that LAPD knew of his federal incarceration and, in bad faith, waited until his release to lodge the arrest warrant—is unsupported by the evidence. First, defendant presented no evidence that any person employed by LAPD was aware of his federal incarceration. The testimony of defendant’s sister established only that she told officers defendant was detained by immigration, but she did not testify to telling the officers defendant was convicted and in federal prison. Second, defendant’s claim that LAPD must have known he was in federal custody “under the same name” used in state court proceedings is not supported by the record. Defendant was charged in this case as “Marvin R. Carranza.” He was committed to federal prison under a different name—“Marvin Rosa-Carranza.” Third, defendant presented no evidence as to why the LAPD lodged its request for extradition shortly before the scheduled end of defendant’s federal sentence. We cannot assume the timing of the request was the result of bad faith, as opposed to LAPD having been notified at the last minute that federal authorities discovered the warrant during a routine warrant check prior to inmate discharge.

“Substantial evidence supports the finding that the delay was directly attributable to appellant’s decision not to notify the probation department of his current residence. An absconding probationer should not benefit from a delay

caused by his own actions.” (*Madrigal, supra*, 77 Cal.App.4th at p. 1054, fn. omitted.) As emphasized by the trial court, at no point during his federal incarceration did defendant contact the probation department to update it regarding his location, and the department had no way of knowing his whereabouts. The trial court emphasized that defendant did not invoke the statutory procedure to trigger the state’s duty to proceed to sentencing. His failure to keep the probation department informed of his whereabouts caused the delay in service of the bench warrant and hence the loss of an opportunity for concurrent sentencing. Defendant has not shown a violation of due process.

### **DISPOSITION**

The order revoking probation is affirmed.

KRIEGLER, J.

We concur:

TURNER, P.J.

BAKER, J.