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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.

BRYCE KARSTEN TUBB,

Defendant and Appellant.

2d Crim. No. B271996
(Super. Ct. No. YA081070-01)
(Ventura County)

Bryce Karsten Tubb was subject to postrelease community supervision (PRCS) when he was arrested. (Pen. Code, § 3451.)¹ He had an informal probable cause hearing before a probation officer where he admitted his PRCS violations and waived a revocation hearing. The trial court found the admissions and waiver Tubb made at the probable cause hearing were valid. Tubb contends, among other things, that the trial court erred because the PRCS revocation process violated his right to due process. We affirm.

¹ All statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

On September 29, 2011, Tubb pled guilty to burglary (§ 459) and identity theft (§ 530.5, subd. (a)), and he admitted two prior prison terms (§ 667.5, subd. (b)). He was sentenced to five years in state prison.

On June 25, 2014, Tubb was released on PRCS.

Tubb was arrested for violating his PRCS conditions on March 3, 2016. The PRCS violations included not reporting to probation, identity theft, disorderly conduct (§ 647, subd. (f)), using methamphetamine, failure to report for drug testing, failure to maintain GPS compliance, and violating the condition that he not use alcohol when he was arrested for violating section 647, subdivision (f). The probation department said, “To date the offender has served one flash incarceration (12-3-15, 10 days) and two revocations (11-20-14, 120 days; 5-19-15, 180 days).”

On March 8, 2016, Probation Officer Alyssa Hallinan held a probable cause hearing and found probable cause that Tubb violated his PRCS conditions. The probation officer’s written report for revocation notes that Tubb was informed of the violations. Tubb signed a waiver of rights form, admitted the PRCS violations, and agreed to “a period of confinement in county jail for 180 days.” He waived his right to a PRCS court revocation hearing.

On March 15, 2016, the Ventura County Probation Agency filed a petition to revoke PRCS and scheduled a hearing on the petition for March 24, 2016.

On March 23, 2016, Tubb 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 March 24, 2016, the trial court denied the motion and found no violation of due process. Tubb's counsel requested an evidentiary hearing "to withdraw the waiver" Tubb made at the probable cause hearing where Tubb admitted violating his PRCS conditions.

The trial court granted the request and held an evidentiary hearing on April 6, 2016. Hallinan testified that at the probable cause hearing she advised Tubb of the allegations, informed him of his right to an attorney and he signed the PRCS "waivers of rights and admission form." Hallinan did not make any threats or promises in order to obtain the waiver. She answered Tubb's questions before he signed the waiver. Tubb "understood what was happening" and agreed to the waiver. He had a question about whether one of the PRCS violations was a duplication of a prior violation for identity theft. Hallinan testified, "When we gathered the information for the probable cause hearing, I spoke to his supervising officer, who had confirmed that it was unrelated" to the prior identity theft case. She said Tubb did not admit the section 647 subdivision (f) alcohol violation and "[t]hat violation is still outstanding."

Tubb testified that Hallinan discussed the violations "briefly," advised him of his right to counsel, and he signed the waiver. He believed one of the charged violations was a duplication of a previous violation. Hallinan told him it was not a duplication. Tubb relied on her representation and signed the waiver. Tubb said, "After receiving discovery, I'm seeing it actually isn't something else. It's the same thing." He said one of

his PRCS violations was for drinking alcohol. He said, “I do not have a condition that says I cannot drink alcohol.”

The trial court denied the request to withdraw the waiver. It found the waiver was valid. It ordered Tubb to serve 180 days in jail with a credit of 69 days.

DISCUSSION

Tubb 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*, 3) it does not comply with the minimum standards for parole revocations, 4) Tubb was entitled to counsel at the probable cause hearing, and 5) the PRCS probation officers are not neutral decision makers.

The PRCS procedures here did not violate Tubb’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, Tubb 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.) Tubb 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.) Tubb claims he was entitled to counsel at the probable cause hearing. But “[n]owhere in the PRCS statutory revocation scheme is there a requirement for the appointment of counsel at the initial hearing.” (*Id.* at p. 1016, fn. 4.) Tubb had counsel on his motion to dismiss hearing and on his hearing to challenge the waiver he signed. “The hearing on the motion to dismiss was tantamount to a second probable cause hearing, this time heard by the superior court.” (*Id.* at p. 1017.) “Assuming, 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.*)

Tubb contends the record shows that the waiver he signed at the probable cause hearing was invalid, procedurally deficient, premature and involuntary. We disagree. “PRCS revocations may be informally resolved.” (*People v. Byron, supra*, 246 Cal.App.4th at p. 1016.) An individual subject to PRCS “may waive his/her right to counsel, admit the PRCS violation, waive a court hearing, and accept the proposed PRCS modification” before “the first court appearance.” (*Ibid.*) There is nothing in the statutory procedure that precludes signing a waiver and admitting violations at the probable cause hearing. (*Ibid.*) Tubb was informed of the violations before he signed the admissions and waiver document.

Moreover, the trial court could reasonably infer Tubb knowingly and intelligently waived his rights and voluntarily admitted his PRCS violations. Tubb signed a PRCS waivers of

rights and admission form, where he acknowledged: 1) he understood that he had the right to a revocation hearing and he waived it; 2) he was advised of and waived his right to be represented by an appointed attorney at that hearing; 3) he was waiving his right “to call witnesses, confront witnesses, cross examine witnesses,” testify or remain silent; 4) he admitted the PRCS violations; and 5) he said his waiver was “executed *freely, voluntarily, and without any coercion* or promise of immunity.” (Italics added) Hallinan’s testimony showed Tubb signed the waivers of rights and admissions form knowingly and voluntarily.

Moreover, the denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless it results in prejudice. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) Tubb makes no showing that a due process defect prejudiced him. (*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].)

At the court hearing, Tubb claimed an identity theft allegation was duplicative of a prior PRCS violation and he challenged a PRCS alcohol violation. But the court resolved the conflict in the evidence about the alleged duplicative violation against Tubb, and Hallinan said the alcohol violation was not one of the PRCS violations that he had admitted. The People note there were other PRCS violations Tubb admitted and did not challenge. Tubb has not shown how the custodial sanction would be different given the number of those violations and his prior history of committing PRCS violations. 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

Tubb's 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:

YEGAN, J.

TANGEMAN, J.

Roger Lund, Judge

Superior Court County of Ventura

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie A. Miyoshi, Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.