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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.

MICHAEL REAGAN,

Defendant and Appellant.

2d Crim. No. B267476  
(Super. Ct. No. 2013010452  
(Ventura County)

Michael Reagan appeals an order revoking his Post Release Community Supervision (PRCS; Pen. Code, § 3450 et seq.)<sup>1</sup> and committing him to 60 days county jail. (§ 3455, subd. (d).) Appellant contends that his due process rights were violated because he was not provided a *Morrissey*-compliant probable cause hearing (*Morrissey v. Brewer* (1972) 408 U.S. 471 [33 L.Ed.2d 484] (*Morrissey*)). We affirm.

*Facts and Procedural History*

On July 22, 2013, appellant pled guilty to possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and admitted two prior prison term enhancements (§ 667.5, subd. (b)). The trial court struck the prior prison term enhancements and sentenced appellant to 16 months state prison. Appellant was released from prison and placed on PRCS on December 1, 2013.

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

In 2014 appellant served 85 days county jail after a PRCS revocation petition was filed and appellant admitted violating his PRCS terms and conditions.

On July 31, 2015, appellant was arrested for not reporting to probation as directed, being under the influence of methamphetamine, possession of drugs and drug paraphernalia, not attending substance abuse treatment, and not completing sex offender therapy. On August 4, 2015, Senior Deputy Probation Officer Jennifer Souza advised appellant of the alleged PRCS violations, conducted a probable cause hearing, and determined there was probable cause that appellant had violated his PRCS terms. (§ 3455, subd. (a).) Appellant was advised of his right to counsel and right to a formal revocation hearing, and advised that Ventura County Probation Agency recommended 60 days county jail. Appellant refused the waiver offer and requested a formal revocation hearing.

On August 12, 2015, Ventura County Probation Agency filed a PRCS revocation petition. (§ 3455, subd. (a).) Appellant appeared with counsel and, on August 20, 2015, made a *Williams* motion (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636) to dismiss the petition on due process grounds. After the trial court denied the motion and a *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118), appellant submitted on the petition. The trial court found appellant in violation of PRCS, revoked PRCS, and ordered appellant to serve 60 days county jail with 42 days credit.

#### *Discussion*

Appellant argues that his procedural due process rights were violated because he did not receive a *Morrissey*-compliant probable cause hearing. The PRCS revocation procedures here utilized are consistent with constitutional, statutory, and decisional law. These procedures do not violate concepts of equal protection or due process of law. We so held in *People v. Gutierrez* (2016) 245 Cal.App.4th 393 and *People v. Byron* (2016) 246 Cal.App.4th 1009. We follow our own precedent. The trial court did not err in denying the motion to dismiss.

Appellant contends that his due process rights were violated because the probable cause hearing resembled a pro forma, ex-parte hearing to solicit a waiver of

PRCS rights and was not conducted by a neutral hearing officer.<sup>2</sup> The record reflects that the hearing officer (Souza) was not appellant's supervising probation officer or the one who reported the PRCS violation or recommended revocation. (See *Morrissey, supra*, 408 U.S. at p. 485 [33 L.Ed.2d at p. 497] [probable cause determination should be made by someone "not directly involved in the case"]; *Williams, supra*, 230 Cal.App.4th at p. 647 [same].) Souza advised appellant of his right to counsel and right to a formal PRCS revocation hearing which appellant invoked. Appellant makes no showing that he was denied a fair hearing.

Appellant contends that the PRCS revocation procedure violates Proposition 9 (entitled "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 and a revocation hearing no later than 45 days following his or her arrest. (See *Williams v. Superior Court, supra*, 230 Cal.App.4th at pp. 649-650.) In *People v. Byron, supra*, 246 Cal.App.4th at pp. 1017-1018, we held that PRCS is different from parole. Section 3044 does not apply to the PRCS revocations which are governed by section 3455. Appellant'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.

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.) Appellant 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*

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<sup>2</sup> Appellant claims that he did not have adequate time to prepare for the probable cause hearing. When the motion to dismiss was argued, appellant presented no evidence about what occurred at the probable cause hearing. Having failed to make an adequate record for review, appellant 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].)

*Moore* (1975) 45 Cal.App.3d 285, 294; *People v. Woodall* (2013) 216 Cal.App.4th 1221, 1238 [same].) Appellant submitted on the PRCS revocation petition and served the custodial sanction (60 days county jail). (See, e.g., *People v. Gutierrez, supra*, 245 Cal.App.4th at p. 399 [defendant submitted on PRCS revocation petition without contesting probable cause determination].) “[T]here is nothing for us to remedy, even if we were disposed to do so.” (*Spencer v. Kemna* (1998) 523 U.S. 1, 18 [140 L.Ed.2d 43, 56].)

*Disposition*

The judgment (order revoking PRCS) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Donald 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.

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