

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

HARLAN DEAN ROMINES,

Defendant and Appellant.

2d Crim. B268180
(Super. Ct. No. 2011029296)
(Ventura County)

Harlan Dean Romines appeals an order revoking his Post Release Community Supervision (PRCS). (Pen. Code, § 3450 et seq.)¹ Appellant contends, among other things, that his due process rights were violated because he was not provided a *Morrissey*-compliant² probable cause hearing. We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

² *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*).

FACTS AND PROCEDURAL HISTORY

In 2012, appellant was charged in this case (No. 2011029296) with the unlawful driving or taking of a motor vehicle (Veh. Code, § 10851, subd. (a)); receiving stolen property (§ 496d, subd. (a)); and possession of a deadly weapon (former § 12020, subd. (a)(4)). It was alleged that appellant was on bail at the time he committed the offenses (§ 12022.1, subd. (b)), had suffered one prior conviction within the meaning of the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and had served two prior prison terms (§ 667.5, subd. (b)).

Appellant pled guilty to the charge of unlawful driving or taking of a motor vehicle and admitted the truth of the special allegations. He was sentenced to the low term of 16 months which was doubled to 32 months as a result of the prior strike. In addition, the trial court imposed a consecutive one-year term for one prison prior, for a total term of imprisonment of three years, eight months. The court dismissed the remaining counts and allegations, and awarded appellant 1,327 days of presentence credit.

The trial court also imposed a consecutive term of 16 months for appellant’s conviction of possessing a controlled substance (Health & Saf. Code, § 11377, subd. (a)) in case No. 2009026782, and a consecutive term of 16 months for appellant’s conviction of second degree burglary (§ 459) in case No. 2011023299. Appellant’s aggregate prison term was six years, four months.

In May 2015, appellant was released on PRCS. Following his release from prison, he served two periods of flash incarceration for violating the terms of his PRCS.

On August 26, 2015, appellant was arrested for a new offense, i.e., failure to report to the Ventura County Probation Agency (Agency). The next day, the Agency held a probable cause

hearing and established probable cause for the alleged violation of the terms and conditions of PRCS. The hearing was conducted by Senior Deputy Probation Officer Venessa Meza. Appellant stated that “[w]hen he serves 10 day flashes, he sleeps for 9 days and then is out on the 10th day with drugs still in his system. He [said he] needs to sit in jail for at least 30 days and then he would like to go to a sober living home.” Notwithstanding this admission, appellant requested a formal hearing.

On September 4, 2015, the Agency filed a petition for revocation of appellant’s PRCS. (§ 3455, subd. (a).) On September 10, the trial court denied appellant’s motion to dismiss the revocation petition on due process grounds based on *Williams v. Superior Court* (2014) 230 Cal.App.4th 636 (*Williams*). The court found him in violation of PRCS and ordered him to serve 45 days in county jail with total credit of 32 days for time served.

On October 9, 2015, appellant was again arrested for a new offense. On October 12, the Agency held a probable cause hearing and established probable cause for the alleged violation of the terms and conditions of PRCS. Appellant remained in custody.

On October 16, 2015, the Agency filed a petition for revocation of appellant’s PRCS. On October 29, the trial court denied appellant’s motion to dismiss the petition on due process grounds, found appellant to be in violation of the terms of his PRCS and ordered appellant to serve 90 days in county jail, with total credit of 41 days for time served.

Appellant filed a notice of appeal on November 5, 2016, in which he challenges the trial court’s September 10, 2015 order denying his motion to dismiss the Agency’s revocation petition. The notice of appeal does not challenge the order entered on October 29, 2015.

DISCUSSION

Appellant argues that his procedural due process rights were violated on August 27, 2015, because he did not receive a *Morrissey*-compliant probable cause hearing. The PRCS revocation procedures at issue here do not violate concepts of equal protection or due process. We so held in *People v. Gutierrez* (2016) 245 Cal.App.4th 393, 401-405 (*Gutierrez*), and *People v. Byron* (2016) 246 Cal.App.4th 1009, 1013-1018. We follow our own precedent. The trial court did not err in denying the motion to dismiss.

Appellant contends that the probable cause hearing was a pro forma ex parte interview, and was not conducted by a neutral hearing officer. The argument is without merit. The record confirms that the hearing officer (Meza) was not appellant's supervising probation officer and did not make the arrest or prepare the PRCS revocation report. (See *Morrissey*, *supra*, 408 U.S. at p. 485 [probable cause determination should be made by someone "not directly involved in the case"]; *Williams*, *supra*, 230 Cal.App.4th at p. 647 [same].)

Moreover, PRCS procedures and Proposition 9 parole procedures need not be identical. (*Gutierrez*, *supra*, 245 Cal.App.4th at pp. 403-404.) There are valid justifications for the different procedures. (*Ibid.*) Appellant did not present evidence in the trial court to support his factual assertions about how the probable cause hearing was conducted. Nor did he present evidence to show that the hearing officers are not neutral, that their findings are incorrect or unreliable, that the procedure was unfair, or that he was not afforded a prompt probable cause hearing after his arrest. He consequently is not in a position to challenge the trial court's finding that the hearing complied with *Morrissey* standards.

In any event, 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 fails to show 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.) Appellant submitted on the PRCS revocation petition without contesting the probable cause determination, and has already served the custodial sanction (45 days in county jail). (See, e.g., *Gutierrez, supra*, 245 Cal.App.4th at p. 399.) Indeed, he was released from jail even before the notice of appeal was filed. Thus, “[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.) We have reviewed appellant’s remaining contentions and conclude he has not demonstrated grounds for reversal.

DISPOSITION

The judgment (order revoking PRCS on September 10, 2015) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gilbert A. Romero, Judge
Superior Court County of Ventura

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, Shawn McGahey Webb,
Supervising Deputy Attorney General and Noah P. Hill, Deputy
Attorney General, for Plaintiff and Respondent.