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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. GEORGE YOUNG, Defendant and Appellant.	B277258 (Los Angeles County Super. Ct. No. 6PH01932)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline Lewis, Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

A petition to the superior court to revoke a person's parole may be filed by either the district attorney or the parole agency. Before a parole agency may petition to revoke parole it must affirmatively determine that intermediate sanctions short of revocation would not be appropriate. The district attorney, on the other hand, need make no such determination before filing a petition to revoke parole.

George Young appeals from an order revoking his parole upon a petition filed by the Los Angeles County District Attorney. He contends lack of any requirement that the district attorney evaluate intermediate sanctions before filing such a petition violated his constitutional right to equal protection.

We disagree and therefore affirm.

BACKGROUND

In 2014, Young was convicted of burglary and sentenced to two years in prison. (Pen. Code, § 459.)[1] He was released on parole supervision four months later. In January 2016, he stole $40 from an unlocked vehicle and then resisted arrest. (§§ 484, subd. (a), 490.2, 148, subd. (a)(1).) He pleaded guilty and was sentenced to 30 days in county jail and 36 months of summary probation.

In March 2016, the district attorney filed a petition to revoke Young's parole in the 2014 case due to his recent conviction. Young demurred to the petition on the ground that it lacked a statement rejecting intermediate sanctions—i.e., sanctions short of revocation, as would have been required had his parole officer filed the petition—which violated his equal

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[1] Undesignated statutory references will be to the Penal Code.

protection rights. The trial court overruled the demurrer and revoked but then reinstated Young's parole upon several terms and conditions, including that he complete his 30-day jail term. He was given 30 days of custody credit.

Young timely appealed the order revoking his parole.

DISCUSSION

Young contends that constitutional guarantees of equal protection of the laws requires that any agency seeking to revoke parole must abide by the same procedural safeguards regardless of the underlying basis for revocation. We disagree.

A. Parole Revocation

A person released after serving a prison term is subject to the jurisdiction of the superior court and to parole supervision by the Department of Corrections and Rehabilitation. (§ 3000.08, subd. (a).) If during the period of parole "any parole agent or peace officer has probable cause to believe that the parolee is violating any term or condition of his or her parole, the agent or officer may, without warrant or other process and at any time until the final disposition of the case, arrest the person . . . ." (§ 3000.08, subd. (c).)

If the supervising parole agency finds good cause to conclude that the parolee violated conditions of parole, it need not immediately seek revocation but may consider imposing without court intervention "additional and appropriate conditions of supervision, including rehabilitation and treatment services and appropriate incentives for compliance, and . . . immediate, structured, and intermediate sanctions for parole violations, including flash incarceration in a city or a county jail." (§ 3000.08, subd. (d).) If it determines such intermediate sanctions would not be appropriate, the parole agency must petition the

superior court to revoke parole pursuant to section 1203.2. (§ 3000.08, subd. (f).) Any such petition must include a written report containing a statement setting forth "the reasons for [the] agency's determination that intermediate sanctions without court intervention . . . are inappropriate . . . ." (Cal. Rules of Court, rule 4.541(c) & (e) (hereafter Rule 4.541).)

A district attorney may also petition the superior court to revoke parole but need not consider intermediate sanctions or report any reason for rejecting them. (See § 1203.2, subd. (b).)

B. Equal Protection

"The federal equal protection clause (U.S. Const., 14th Amend.) . . . [citation] provide[s] that persons who are similarly situated with respect to the legitimate purpose of a law must be treated alike under the law." (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 857.) Article I, section 7, subdivision (a) of the California Constitution similarly prohibits denial of equal protection of the laws. The equal protection guarantees of both constitutions "are substantially equivalent and analyzed in a similar fashion." (*People v. Leng* (1999) 71 Cal.App.4th 1, 11.)

" ' "The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." ' [Citation.] 'The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.' [Citations.] This initial inquiry is not whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.' " (*Cooley v. Superior Court*

(2002) 29 Cal.4th 228, 253.) "In other words, we ask at the threshold whether two classes that are different in some respects are sufficiently similar with respect to the laws in question to require the government to justify its differential treatment of these classes under those laws." (*People v. McKee* (2010) 47 Cal.4th 1172, 1202.)

C. Application

Our equal protection inquiry begins by identifying whether similarly situated persons have been treated in an unequal manner.

Young argues that parolees subjected to revocation petitions filed by a district attorney are similarly situated to those subjected to petitions filed by a parole agency. We accept this similarity.

But Young makes no effort to identify how these groups are treated unequally. He notes that a parolee subjected to a revocation petition filed by the district attorney would not have immediate access to an explanation why intermediate sanctions were deemed inappropriate, but we fail to discern, and Young does not explain, how this presents a disadvantage.

Young argues an intermediate sanctions assessment may be beneficial "for a parolee struggling to adjust to life outside of state prison," "especially when plagued by an alcohol or substance abuse problem." That may be true when the assessment results in something other than revocation of parole revocation, but a parole agency that petitions the superior court for revocation has already *rejected* alternative measures. Young fails to explain how a parolee like himself who was never assessed for intermediate sanctions is disadvantaged over one who was assessed but found unsuitable for them. The opposite is

probably true, as the former parolee could advocate more convincingly for an alternative to revocation than could the latter, for whom such alternatives had already been considered and rejected.

Young having failed to establish that similarly situated parolees facing revocation proceedings are treated unequally, we need not consider whether declining to require that prosecutors consider intermediate sanctions serves a legitimate government interest.

Neither need we address Respondent's arguments that Young's claim is moot or that he failed to preserve it.

DISPOSITION

The trial court's order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.