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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.

ARLENE DURAN,

Defendant and Appellant.

2d Crim. No. B267302  
(Super. Ct. No. 2011022176)  
(Ventura County)

Arlene Duran was subject to postrelease community supervision (PRCS) when she was incarcerated. (Pen. Code, § 3451.) She had an informal probable cause hearing before a probation officer. Subsequently, the trial court found her in violation of PRCS. She contends, among other things, that the trial court erred because the PRCS revocation process violated her right to due process. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

In July 2011, Duran pled guilty to transportation of a controlled substance. (Health & Saf. Code, § 11352, subd. (a).) She was sentenced to four years in state prison.

On May 16, 2013, she was released on PRCS.

Duran violated PRCS supervision terms and she ultimately turned herself in to custody on August 31, 2015.

On September 2, 2015, Probation Officer Venessa Meza held a probable cause hearing and found probable cause that Duran violated her PRCS conditions. The probation officer's written report for revocation notes Duran was informed of the violations, refused a waiver offer, requested a court revocation hearing, and was advised of her right to counsel.

On September 9, 2015, the Ventura County Probation Agency filed a petition to revoke PRCS and scheduled a hearing date for September 17.

On September 15, 2015, Duran 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*), she claimed the PRCS revocation procedure violated her due process rights.

On September 17, 2015, the trial court denied the motion and found no violation of due process. On the same day, the court held a PRCS revocation hearing. Duran admitted the allegations of the petition. The court found her in violation of PRCS. It ordered her to serve 180 days in the county jail with a credit of 36 days.

## DISCUSSION

Duran contends, among other things, that: 1) she 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 violates Proposition 9 and does not comply with the minimum standards for parole revocations, and 4) the PRCS probation officers do not conduct proper evidentiary hearings and are not neutral decision makers.

The PRCS procedures here did not violate Duran'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 her incarceration for violating PRCS conditions, Duran received a prompt probable cause hearing. (*Gutierrez*, at p. 402.) The PRCS hearing officers who decide probable cause are neutral decision makers. (*Morrissey v. Brewer*, *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.) Duran 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.)

Duran contends: 1) she did not have adequate notice of her procedural rights at the probable cause hearing, 2) she was “never informed that she could request a continuance” of that hearing so she “could challenge the allegations,” and 3) Meza had no “genuine interest in determining if the allegations are supported by evidence.”

But at the September 17th motion to dismiss and revocation hearings, Duran’s counsel did not raise these issues. Her counsel did not claim that the probable cause hearing was procedurally deficient or that Meza did not properly perform her role as the hearing officer. Nor did counsel present any evidence at these hearings. Issues on appeal are forfeited where they were not initially raised in the trial court. (*People v. Vines* (2011) 51 Cal.4th 830, 867.) Moreover, as the People note, the record shows Duran was informed of the violations, refused a waiver offer, requested a court revocation hearing, and was advised of her right to counsel.

Duran suggests that she did not have adequate time to prepare for the probable cause hearing because it occurred on the same day she was informed of the PRCS violations. But she has made no showing that she ever needed or requested a continuance or what additional information she would have presented at a continued

hearing. She has not shown how the alleged insufficient preparation time impaired her rights or would have changed the result. She did not present evidence in the trial court to support the challenges she now makes. The People correctly note, “[T]here is nothing to show appellant ever sought to dispute, at an administrative hearing, whether probable cause existed.”

“The hearing on the motion to dismiss was *tantamount to a second probable cause hearing.*” (*People v. Byron, supra*, 246 Cal.App.4th at p. 1017, italics added.) It allowed Duran the opportunity to raise any alleged deficiencies or unfairness occurring in the first probable cause hearing. The initial probable cause hearing was “the functional equivalent of an arraignment and a probable cause ruling.” (*Ibid.*) The revocation hearing gave her another opportunity to raise challenges to the probable cause hearing. She has not shown any evidence of due process infirmities. But even “[a]ssuming, 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.*)

Moreover, 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.) Duran makes no showing that a due process defect prejudiced her or affected the outcome of the PRCS revocation hearing. (*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].) She admitted the allegations of the petition. She 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 her remaining contentions and we conclude she has not shown grounds for reversal.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Gilbert A. Romero, Judge

Superior Court County of Ventura

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