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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.

RYAN GREEN,

Defendant and Appellant.

2d Crim. No. B267475
(Super. Ct. No. 2012042162)
(Ventura County)

Ryan Green appeals an order revoking his postrelease community supervision (PRCS). (Pen. Code, § 3450 et seq.)¹ Appellant contends that his due process rights were violated because he was not provided a *Morrissey*-compliant² probable cause hearing. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2013, appellant pled guilty to evading an officer (Veh. Code, § 2800.2, subd. (a)), and was placed on formal probation for 36 months. In December 2014, the trial court revoked probation and sentenced appellant to two years in state prison. He was released on PRCS a few months later.

On July 30, 2015, appellant was arrested. On August 3, 2015, Senior Deputy Probation Officer Jennifer Souza advised appellant of the alleged PRCS

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

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

violations (failure to report to probation, engaging in conduct prohibited by law, and possession of a device resembling a firearm), 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 that Ventura County Probation Agency was recommending 180 days in county jail. Appellant rejected the recommendation, denied violating PRCS and requested appointment of counsel.

On August 10, 2015, Ventura County Probation Agency filed a PRCS revocation petition. (§ 3455, subd. (a).) Appellant moved to dismiss the petition on due process grounds based on *Williams v. Superior Court* (2014) 230 Cal.App.4th 636 (*Williams*). The trial court denied the motion. On August 31, 2015, it found that appellant violated PRCS and ordered him to serve 150 days in county jail (with a total credit of 66 days).

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 challenged here are consistent with constitutional, statutory and decisional law. These procedures 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, 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 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 hearing officer (Souza) 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].) Appellant makes no showing that he was denied a fair hearing.

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; *People v. Woodall* (2013) 216 Cal.App.4th 1221, 1238.) 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 (150 days in county jail). (See, e.g., *People v. Gutierrez*, *supra*, 245 Cal.App.4th at p. 399.) "[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.)

DISPOSITION

The judgment (order revoking PRCS) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donald D. Coleman, Judge
Superior Court County of Ventura

Susan S. Bauguess, under appointment by the Court of Appeal, for
Defendant and Appellant.

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