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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.

MATTHEW HERNANDEZ,

Defendant and Appellant.

2d Crim. No. B267478
(Super. Ct. No. 2014003322)
(Ventura County)

Matthew Hernandez was subject to postrelease community supervision (PRCS) when he was arrested. (Pen. Code, § 3451.) He had an informal probable cause hearing before a probation officer where he admitted his PRCS violations and waived a revocation hearing. Subsequently, the trial court accepted the admissions and waiver Hernandez made at the probable cause hearing. Hernandez contends, among other things, that the trial court erred because the PRCS revocation process violated his right to due process. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 30, 2014, Hernandez pled guilty to possession of a firearm or ammunition by a prohibited person. (Pen. Code, § 30305, subd. (a)(1).) He was sentenced to three years in state prison.

On July 31, 2015, Hernandez was released on PRCS.

Hernandez was arrested for violating his PRCS conditions on September 1, 2015.

On September 3, 2015, Probation Officer Venessa Meza held a probable cause hearing and found probable cause that Hernandez violated his PRCS conditions. The probation officer's written report for revocation notes that Hernandez was informed of the violations. He signed a waiver of rights form, admitted the PRCS violations, and "agreed to a period of confinement of 180 days" in county jail. He waived his right to a PRCS court revocation hearing.

On September 10, 2015, the Ventura County Probation Agency filed a petition to revoke PRCS and scheduled a hearing on the petition for September 17, 2015.

On September 15, 2015, Hernandez 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*), he claimed the PRCS revocation procedure violated his 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 denied Hernandez's request to withdraw the waiver and admissions he signed at the probable cause hearing.

DISCUSSION

Hernandez contends, among other things, that: 1) he 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 Hernandez'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 his arrest for violating PRCS conditions, Hernandez 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." (*Byron*, at p. 1017.) Hernandez 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.)

Hernandez contends the waiver he signed at the probable cause hearing was invalid. He claims he was not properly advised of his rights by hearing officer Meza and “there is no evidence [he] waived [his] rights.” We disagree. The trial court could reasonably infer that Hernandez made a knowing and intelligent waiver of his rights and voluntarily admitted his PRCS violations.

The declaration of Deputy Probation Officer Daniel Baldwin reflects that Meza conducted “an administrative hearing.” Hernandez was “informed of the violations,” and he “agreed to a period of confinement of 180 days at [the] Ventura County Jail.”

Hernandez signed a PRCS “waiver of rights and admission form” where he acknowledged that he understood: 1) he had the right to a revocation hearing and he waived it; 2) he had the right to be represented by an attorney at that hearing and, if he could not afford one, an attorney would be appointed for him free of charge, and he waived this right; 3) during the revocation hearing, he had the right “to call witnesses, confront witnesses, cross examine witnesses,” testify or remain silent, and he was waiving these rights; 4) he admitted that he violated his PRCS conditions; and 5) he said his waiver was “executed *freely, voluntarily, and without any coercion* or promise of immunity.” (Italics added.) He was advised that the “maximum” period of confinement in county jail was 180 days, and he agreed to that period. Hernandez also acknowledged that he understood “each and every one of the paragraphs” that he “initialed” on the form after “*careful consideration.*” (Italics added.) He signed and dated that form. Meza also signed that form.

On a separate document, Hernandez acknowledged that he had “received a copy” of the waiver of rights and admission form. On that document Meza stated that she “completed an Administrative Probable Cause hearing.” She “determined” that Hernandez “[a]ppeared to understand” his rights, and, while informing him of his rights, she “[r]ead and spoke slowly.” Meza signed that document.

Hernandez did not include a declaration with his motion to dismiss. At the September 17th hearing, he presented no testimony or evidence. He consequently did not provide the court with facts to challenge the voluntariness of his admissions.

Hernandez claims he did not have adequate time to prepare for the probable cause hearing because it occurred on the same day he was informed of the PRCS violations. He contends he was not advised that he could continue that hearing. But he did not raise this issue in the trial court. 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, he has made no showing that he ever needed or requested a continuance or what evidence he would have presented at a continued hearing to prove he did not commit the PRCS violations.

The denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless it results in prejudice. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) Hernandez makes no showing that a due process defect prejudiced him. (*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].) He admitted the violations and presented no evidence to challenge the waiver. His counsel made no offer of proof that Hernandez did not commit the violations. He 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 Hernandez’s remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The order is affirmed.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Gilbert A. Romero, Judge

Superior Court County of Ventura

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