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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALLEN JAMES JOYNER,

Defendant and Appellant.

E085698

(Super.Ct.No. 25CJ000119)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steve Malone, Judge. Affirmed.

Laura Arnold, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Assistant Attorney General, A. Natasha Cortina and Michael J. Patty, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant and appellant Allen James Joyner appeals from the trial court's order revoking his Post Release Community Supervision (PRCS). On appeal, defendant argues he was denied due process at the revocation hearing because he was examined by the court about a violation of terms of supervision that was not alleged in the petition to revoke supervision. We reject this contention and affirm the order revoking defendant's PRCS.

II.

FACTUAL AND PROCEDURAL BACKGROUND

On October 13, 2022, after defendant was convicted of attempted possession of a firearm by a felon (Pen. Code,¹ §§ 664/29800, subd. (a)(1)), the trial court sentenced him to one year, four months in state prison. In December 2022, defendant was released subject to PRCS with a supervision termination date of April 21, 2026.

On January 21, 2025, the San Bernardino County Probation Department filed a petition to revoke defendant's PRCS alleging that defendant failed to report to the probation office in person as directed by the terms and conditions of his supervision. Specifically, the petition alleged that, on November 6, 2024, defendant was directed to report in person for an office visit on December 4, 2024, but failed to report on that date. The trial court revoked defendant's PRCS and issued a no bail bench warrant.

¹ All future statutory references are to the Penal Code.

The contested revocation hearing was held on March 5, 2025. At that time, Probation Officer Josephine Gonzalez testified that in 2022 she had supervised defendant and had advised him of the various terms and conditions of his supervision in October 2022. One of the terms required him to report to the probation office in person as directed. On November 6, 2024, defendant was notified that he needed to report on December 4, 2024. However, he failed to comply as failed to report as directed.

Officer Gonzalez did not see defendant personally on December 4, 2024, and there were no notes or entries indicating he had reported to the probation office. Officer Gonzalez explained that probation records are kept online in a file called Caseload Explorer, and probation officers input information as it is received. Probation officers also bear the responsibility to make sure that information is accurate. These records are relied upon by the Probation Department to keep track of who is checking in, what notes are necessary, which probationers need to be contacted and followed up on, along with petitions or supplemental reports. Some of the inputted information in Caseload Explorer comes from court and other databases and other people. Officer Gonzalez, however, could not testify to the accuracy of that other information. She acknowledged that while she was working on December 4, 2024, there were other officers working, but she did not ask them whether defendant had come in to check in.

Officer Gonzalez had prepared a report for this violation and recommended defendant serve 120 days in custody given that it was his fourth probation violation in this matter and had a history of absconding and not reporting. Officer Gonzalez had tried

to contact defendant between December 4, 2024—the date he failed to report—and January 2025 when the petition to revoke probation was filed. However, defendant’s phone was not in service. She filed the petition one month after the violation because she knew he was homeless, and she wanted to give him a chance to bring himself into the probation office.

Defendant testified that he did check in on December 4, 2024. He recalled that he had checked in because he gave a naval badge to another probation officer when he arrived. He claimed that he told the receptionist his probation officer’s name and waited for about 20 minutes, and another probation officer came out and said that his officer was not there. Defendant also stated that his phone was broken, which is why Officer Gonzalez could not reach him.

In response to questioning by the trial court about when defendant next showed up to the probation office, defendant noted that he was supposed to report on January 6, 2025. He asserted the probation officer he saw on December 4, 2024, told him to come on that date, but he did not. He maintained he had no contact with probation after December 4, 2024, because he had no phone.

At the close of evidence, defense counsel argued that the court should not find defendant in violation of his PRCS and should dismiss the petition. In response, the trial court asked defense counsel about the significance of defendant’s admission that he did not appear on January 6, 2025. Defense counsel responded: “Well, I would ask the Court to focus on the December 4th allegation and that, you know, anything outside of that, we

just ask the Court to not consider that. That could be a separate potential violation, but I think the focus today should be on the December 4th.” The People submitted.

The trial court ruled as followed: “All right. I had conflicting testimony. The testimony from Ms. Gonzales is that when a probation officer interacts with a defendant, they input the information into a computer system at or near the time of the event, and that it’s relied on daily by the Probation Department, and they can—so there is an indicia that it’s accurate. And there is no reference in the record, whatsoever, that the defendant did, in fact, appear on December 4th to probation for his meeting. Additionally, the defendant testified and admitted that even if he had appeared, he’s had no contact with probation since that date. So the court finds that the defendant has failed to cooperate with probation and plan of rehabilitation and he has failed to report as directed.”

The court thus found defendant had violated his PRCS when he failed to report as directed and imposed 120 days in custody with 30 days credit for time served. The court ordered defendant to report to the Probation Department within 48 hours of his release from custody and comply with the terms and conditions of probation. Defendant timely appealed.

III.

DISCUSSION

Defendant contends the trial court violated his due process right by relying upon his admission to a failure to report on January 6, 2025, because that was not the basis of the petition, and he therefore lacked the requisite notice. The People argue defendant

forfeited his claim by failing to raise it below. In the alternative, the People assert that there was no error as the trial court's primary ruling was that he failed to report on December 4, 2024, as alleged and the court merely mentioned a failure to subsequently report as an alternative ground for its ruling.

"It is well established that a lack of notice can be forfeited by failure to object, even when it is claimed that it violated due process." (*People v. Nguyen* (2017) 18 Cal.App.5th 260, 271.) For example, the imposition of an unpleaded sentence enhancement is an error that may be forfeited if a defendant does not object in the trial court. (*People v. Haro* (2021) 68 Cal.App.5th 776, 789 [the defendant's claim that she did not receive fair notice of unpleaded enhancement was subject to forfeiture rule, although court exercised its discretion to address argument]; *Nguyen*, at p. 272 ["It may well be that defense counsel forfeited any constitutional objection based on lack of notice in violation of due process by failing to raise it below."]); accord *People v. Houston* (2012) 54 Cal.4th 1186, 1225-1229 [the defendant convicted of deliberate and premeditated attempted murder forfeited due process claim that indictment erroneously omitted allegations of deliberation and premeditation]; *People v. Toro* (1989) 47 Cal.3d 966, 975-978 [the defendant charged with attempted murder forfeited fair notice claim by not objecting when court instructed jury on uncharged lesser related offense of battery with serious bodily injury], disapproved on another ground by *People v. Guiuan* (1998) 18 Cal.4th 558, 568, fn. 3.) Here, defendant did not interpose a contemporaneous due

process objection based on his alleged lack of fair notice. Therefore, his due process argument is forfeited.

Even if preserved, there was no due process violation. Under the PRCS Act of 2011, violation of PRCS can result in immediate sanctions, including up to 10 days of flash incarceration. (§ 3454, subd. (b); *People v. Gutierrez* (2016) 245 Cal.App.4th 393, 399 (*Gutierrez*).) If the supervising county agency determines that intermediate sanctions are not appropriate, it “shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision.” (§ 3455, subd. (a).) The petition must include a report from the supervising agency that explains “the relevant terms and conditions of [PRCS], the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations.” (*Ibid.*; Cal. Rules of Court, rule 4.541(c); *Gutierrez, supra*, 245 Cal.App.4th at p. 400.)

A person charged with violating PRCS is entitled to notice of a petition for revocation. (§ 1203.2, subd. (b)(1).) The person may waive a formal hearing and agree to modifications of his or her PRCS conditions. Absent a waiver, the court holds a formal hearing at which the supervised person is entitled to be represented by counsel. (§ 1203.2, subd. (b)(2).) The hearing “shall be held within a reasonable time after the filing of the revocation petition.” (§ 3455, subd. (c); *Gutierrez, supra*, 245 Cal.App.4th at p. 400.) In conducting the hearing, the court must review and consider the probation officer’s report to determine whether the alleged violations occurred and if so, whether to revoke or terminate PRCS. (§ 1203.2, subd. (b)(1); *Gutierrez*, at p. 400; see *People v.*

Vickers (1972) 8 Cal.3d 451, 457-460; *Morissey v. Brewer* (1972) 408 U.S. 471, 488-489.) PRCS violations must be proven by a preponderance of the evidence. (§ 3455, subd. (c).)

Section 1203.2 authorizes a court to revoke parole “if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the . . . parole officer or otherwise that the person has violated any of the conditions of their supervision . . .” (§ 1203.2, subd. (a).) The violation of parole must be willful. (*People v. Gonzalez* (2017) 7 Cal.App.5th 370, 382 (*Gonzalez*), disapproved on another ground in *People v. DeLeon* (2017) 3 Cal.5th 640.) We review the trial court’s order revoking parole under the abuse of discretion standard, and the court’s factual findings are reviewed for substantial evidence. (*Gonzalez, supra*, 7 Cal.App.5th at p. 381 [addressing revocation of postrelease community supervision].)

A revocation proceeding violates due process if it is fundamentally unfair. (*People v. Eckley* (2004) 123 Cal.App.4th 1072, 1080.) Defendant 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 [the defendant has burden of showing prejudice]; *In re Moore* (1975) 45 Cal.App.3d 285, 294.) Under section 3453, subdivision (e), “a person subject to PRCS . . . has an obligation . . . to report ‘as directed’ by the supervising county agency.” (*Gonzalez, supra*, 7 Cal.App.5th at pp. 374-375.) The trial court’s primary finding was based upon defendant’s failure to report as directed to probation on December 4, 2024. The court additionally pointed out that defendant “testified and

admitted that even if he had appeared, he's had no contact with probation since that date.”

Indeed, defendant does not directly challenge the ruling that he failed to report to probation as directed on December 4, 2024, as alleged in the petition to revoke PRCS in his opening brief.

Defendant’s reliance on *People v. Felix* (1986) 178 Cal.App.3d 1168 (*Felix*) and *People v. Mosely* (1988) 198 Cal.App.3d 1167 (*Mosley*) is misplaced. In *Felix, supra*, 178 Cal.App.3d 1168, during a probation revocation hearing, a probation officer testified about a violation which was not mentioned in the notice of violations. The defendant objected. The court gave his counsel an opportunity to request a continuance, but he did not request one and proceeded with the hearing. On appeal, the defendant claimed his due process rights were violated. The Court of Appeal disagreed. It held that the trial court “provided a constitutionally sufficient safeguard of appellant’s due process rights and preserved the fundamental fairness of the proceedings when it offered to consider a motion for a continuance.” (*Felix*, at p. 1172.)

In *Mosley, supra*, 198 Cal.App.3d 1167, the defendant was notified that his probation was subject to revocation after he was arrested for rape. His probation revocation hearing was held concurrently with his jury trial on the rape charge. (*Mosley*, at p. 1170.) While the jury was deliberating, the court asked the parties to address the issue of probation revocation. The prosecutor mentioned at that time, for the first time, that evidence at trial indicated that the defendant violated a second probation condition by drinking alcohol, and asked the court to consider revoking probation on that basis.

(*Ibid.*) After the jury acquitted the defendant of the charged rape, the court found that the defendant had violated his probation by drinking alcohol and revoked his probation.

(*Ibid.*) On appeal, the defendant argued that he had been denied due process because he was not given proper notice of the basis for revocation. (*Id.* at p. 1172.) The appellate court agreed, finding that “[t]he evidentiary phase of the hearing was completed before either he or the court was aware of the charge which ultimately constituted the basis for revocation. [The defendant] had no opportunity to prepare and defend against that allegation.” (*Id.* at p. 1174.)

Felix and *Mosley* do not assist defendant here. Unlike in *Felix* and *Mosley*, the trial court did not base its ruling on defendant’s statement that he did not appear on January 6, 2025. Instead, the court mentioned it as an alternative ground. Moreover, the petition to revoke defendant’s PRCS alleged that defendant violated term No. 4, which stated, “Cooperate with the Probation Officer in plan of rehabilitation and follow all reasonable directives of the Probation Officer(s),” and term No. 26, which provided, “Report to the Probation Officer in person immediately or upon release and thereafter as directed. . . .” Defendant’s failure to report to probation on December 4, 2024, and since that date, including January 6, 2025, was part and parcel of his failure to report to probation on December 4, 2024. Defendant clearly knew he was required to report to probation as directed, had prior written notice of the allegation regarding his failure to do so, as well as an ample opportunity to present a defense. In sum, defendant had adequate

notice that he faced revocation of his PRCS for failing to report to the probation department as directed. We thus reject defendant's due process claim.

IV.

DISPOSITION

The trial court's order revoking defendant's PRCS is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.