

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVIER ADRIAN ACEVEDO,

Defendant and Appellant.

2d Crim. No. B255267
(Super. Ct. No. LA028491)
(Los Angeles County)

Javier Acevedo appeals an order finding him in violation of his Post-Release Community Supervision (PRCS) (Pen. Code, § 3450 et seq.)¹ He claims he was not on PRCS at the time of the order. His claim raises the question of the proper calculation of periods during which his time under PRCS was tolled. The parties agree tolling began when PRCS was revoked at the issuance of an arrest warrant. We conclude tolling ended when the court reinstated Acevedo to PRCS, not when he was returned to custody. The trial court properly calculated the tolling. We affirm.

FACTS

In June 1998 Acevedo was convicted of two counts of transporting a controlled substance (Health & Saf. Code, § 11379, subd. (a)) and one count of

¹ All statutory references are to this code unless stated otherwise.

possession of a controlled substance for sale (§ 11378). He was sentenced to 13 years in the state prison. He was released on parole on July 28, 2008. At some point he was returned to prison on a parole violation.

On December 25, 2011, he was released from prison on PRCS. He was originally scheduled to remain under supervision until April 22, 2013, the same date that he would have been discharged from parole.

After Acevedo was released from prison, he failed to report to his probation officer as ordered. On February 8, 2012, the court issued a bench warrant. On April 3, 2012, he was arrested on the bench warrant for failure to report. On April 9, 2012, the court ordered him to report to his probation officer within 48 hours and released him. He did not report.

On May 24, 2012, the court issued another bench warrant. On June 4, 2012, Acevedo was arrested on the bench warrant. On June 11, 2012, the court ordered him to report to his probation officer within 24 hours and released him.

On June 18, 2012, the People filed a petition to revoke Acevedo's PRCS based on the April 2012 failure to report. On July 10, 2012, the court held a hearing on the petition. The court denied the petition on the ground that the terms and conditions alleged to have been violated in the petition were "a little bit different than what . . . the convoluted facts have turned out to be[.]" The court released Acevedo and ordered him to report to probation within 48 hours.

Acevedo again failed to report. The court issued a bench warrant on July 20, 2012. He was arrested on August 24, 2012, and appeared in court on August 27, 2012. The court ordered him to serve 10 days and report to probation within 24 hours of his release.

On August 29, 2012, the court held a hearing on revocation of Acevedo's PRCS. Acevedo waived a formal hearing and agreed to serve 90 days in custody. He was released from custody on September 30, 2012.

On October 8, 2012, Acevedo contacted his Ventura County probation officer and provided an address in Pomona where he claimed to be residing. He

requested a transfer of his PRCS to Los Angeles County. Los Angeles County denied the request on the ground that the address Acevedo provided was false.

On November 29, 2012, the court issued a bench warrant because Acevedo's whereabouts were unknown. He was arrested on May 1, 2013. On May 27, 2013, the court discharged the warrant and ordered him to report to his probation officer within 48 hours of his release.

On June 17, 2013, the court revoked and reinstated his PRCS and ordered him to serve 120 days in jail with 49 days credit for time served. On June 22, 2013, he was released from custody.

On July 5, 2013, a bench warrant was issued for Acevedo's arrest because his whereabouts were unknown. On July 9, 2013, he was arrested on the warrant. On July 15, 2013, the court ordered Acevedo to serve a flash incarceration and report to probation within 48 hours of his release.

Acevedo failed to report to probation and an arrest warrant was issued on September 27, 2013. He was arrested on the warrant on February 21, 2014. On February 24, 2014, the court discharged the warrant and ordered Acevedo held in jail pending the filing of a PRCS revocation petition.

On February 28, 2014, the People filed another petition to revoke Acevedo's PRCS. Acevedo argued that his period of supervision under PRCS had terminated. His probation officer testified that his period of supervision had been extended by tolling. The probation officer presented a chart showing six periods of tolling between the time a warrant was issued for Acevedo's arrest and the time he was reinstated to PRCS. The total days tolled was 430. The trial court found Acevedo violated his PRCS by failing to report to probation and sentenced him to 180 days in jail.

Had Acevedo complied with PRCS from the date of his February 28, 2014 hearing, he would have been released from the program on June 26, 2014. We have been informed he has not complied, and thus, the case is not moot.

DISCUSSION

Acevedo contends the trial court erred in finding he was still subject to PRCS.

Section 3451, subdivision (a) provides in part, "Notwithstanding any other law . . . , all persons released from prison on or after October 1, 2011 . . . shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to [PRCS]." Section 1203.2, subdivision (a) provides in part, "[U]pon issuance of a warrant for rearrest the court may revoke and terminate the [PRCS] of the person if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her supervision[.]"

Section 3456, subdivision (b) provides, "Time during which a person on postrelease community supervision is suspended because the person has absconded shall not be credited toward any period of postrelease supervision."

Acevedo argues the trial court miscalculated the tolling periods. He calculates tolling from the time the arrest warrant was issued to the date of his arrest. The court calculated the tolling periods from the time the arrest warrant was issued until Acevedo's PRCS was reinstated.

The trial court is correct. The court may terminate PRCS upon issuance of an arrest warrant. (§ 1203.2, subd. (a).) It remains suspended until the court reinstates it. That suspended time is not necessarily concurrent with the time during which the person was being taken into custody. (See *Couzens*, Sentencing Cal. Crimes (Rutter Group 2014) ¶ 11:82 ["If the person is revoked for any reason under the general provisions of section 1203.2[,] until the person is reinstated on supervision, none of the time in revoked status will reduce the period of supervision"].)

Acevedo's reliance on section 3064 is misplaced. That section provides, "From and after the suspension or revocation of the parole of any prisoner and until his return to custody he is an escapee and fugitive from justice and no part of the time during which he is an escapee and fugitive from justice shall be part of his term." By its terms the section is applicable to the "revocation of . . . parole." (*Ibid.*) PRCS is not parole.

PRCS and parole are two separate forms of supervision. (*People v. Espinoza* (2014) 226 Cal.App.4th 635, 639.) Unlike section 3064, section 3456, subdivision (b), applicable to tolling of PRCS, does not contain the phrase "until his return to custody." Had the Legislature intended to end tolling of PRCS upon a person's return to custody, it would have said so.

For the same reason Acevedo's reliance on *People v. Pearl* (2009) 172 Cal.App.4th 1280, is misplaced. *Pearl* concerns the tolling of parole, not PRCS.

Acevedo recognizes that in *People v. Espinoza, supra*, 226 Cal.App.4th, page 639, we held that PRCS and parole are two different forms of supervision. He asks that we reconsider *Espinoza* and conclude PRCS is the equivalent of parole, at least for persons like himself who were once on parole. We decline Acevedo's request.

Espinoza was correctly decided and applies to this case. PRCS and parole are two separate forms of supervision. They do not become equivalent simply because the person being supervised was once on parole.

The judgment (order) is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Brian J. Back, Judge

Superior Court County of Ventura

California Appellate Project, Jonathan B. Steiner and Richard B. Lennon, under appointment by the Court of Appeal for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Idan Ivri, Deputy Attorney General, for Plaintiff and Respondent.