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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.

DAVIS SEARLES,

Defendant and Appellant.

2d Crim. No. B265730
(Super. Ct. No. 2012030516)
(Ventura County)

Davis Searles 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 October 2012, appellant pled guilty to evading an officer (Veh. Code, § 2800.2, subd. (a)) and possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)). The trial court sentenced him to three years in state prison. He was released on PRCS in 2014.

After multiple arrests for PRCS violations, appellant was taken into custody on May 2, 2015. On May 6, 2015, Senior Deputy Probation Officer Venessa Meza advised appellant of the alleged PRCS violations (failure to report to probation as

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

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

directed, use of methamphetamine, failure to report for drug testing, and failure to participate in a drug treatment program), 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 May 11, 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 May 28, 2015, found that appellant violated PRCS, and ordered him to serve 150 days in county jail (with a total credit of 54 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 here challenged 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 his due process rights were violated because the probable cause hearing was not conducted by a neutral hearing officer and resembled an *ex parte* hearing to solicit a waiver of PRCS rights. The argument is without merit. The hearing officer (Meza) 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.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Donald D. Coleman, Judge
Superior Court County of Ventura

Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Stephanie A. Miyoshi, Deputy Attorney General, for Plaintiff and Respondent.