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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.

FREDERICK PICHEL,

Defendant and Appellant.

2d Crim. No. B266477
(Super. Ct. No. 2010045547)
(Ventura County)

Frederick Pichel appeals an order revoking his Post Release Community Supervision (PRCS; Pen. Code, § 3450 et seq)¹ and committing him to 180 days county jail. (§ 3455, subd. (d).) Appellant contends that his due process rights were violated because he was not arraigned within 10 days of his arrest or provided a *Morrissey*-compliant probable cause hearing (*Morrissey v. Brewer* (1972) 408 U.S. 471 [33 L.Ed.2d 484] (*Morrissey*)). Appellant further claims that section 3063.1 prohibits the imposition of custodial sanctions (i.e., 180 days county jail) where the PRCS violation is based on the commission of a non-violent drug possession offense. (See *People v. Armogeda* (2015) 233 Cal.App.4th 428, 433-436.) We affirm.

Facts and Procedural History

In 2011, appellant pled guilty to transportation of psilocybin (Health & Saf. Code, § 11379, subd. (a)) and admitted a prior strike conviction (§§ 667, subds. (c)(1) &

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

(e)(1); 1170.12, subds. (a)(1) & (c)(1)) and a prior prison term enhancement (§ 667.5, subd. (b)). Appellant was granted probation but violated probation four times. The trial court terminated probation and sentenced appellant to three years state prison. On January 26, 2015 appellant was released from prison and subject to PRCS.

On May 13, 2015, appellant was arrested for multiple PRCS violations: consuming methamphetamine, alcohol and marijuana, possessing drug paraphernalia, and not attending treatment classes. Senior Deputy Probation Officer Vanessa Meza advised appellant of the alleged PRCS violations, conducted a probable cause hearing on May 14, 2015, determined there was probable cause that appellant had violated his PRCS terms, and informed appellant that the Ventura County Probation Agency recommended 180 days county jail. (§ 3455, subd. (a).) Appellant was also advised of his right to counsel and right to a formal revocation hearing. Appellant admitted "relapsing" twice and said he was allowed to smoke "weed." Despite these admissions, appellant denied violating PRCS and requested a formal revocation hearing.

On May 22, 2015, Ventura County Probation Agency filed a PRCS revocation petition. (§ 3455, subd. (a).) Appellant appeared with counsel, scheduled a "confinement credit review" hearing, and filed a *Williams* motion (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636) to dismiss the petition on the due process grounds.

The trial court heard and denied the motion to dismiss on June 5, 2015. At the PRCS revocation hearing, Deputy Probation Officer Getzamani Haddad testified that seven unused syringes and a pipe with marijuana residue were found during a search of appellant's room. The day of the search, appellant admitted using methamphetamine three weeks earlier and not attending moral recognition therapy or drug treatment classes. The trial court found five PRCS violations to be true: possession of a marijuana pipe on two different occasions (allegation numbers 3 and 5); use of methamphetamine (allegation number 7); failure to attend drug treatment classes (allegation number 8); and failure to attend moral recognition classes and meet with Case Management Services (allegation number 9). Appellant argued that the trial court could not impose a jail sanction if the PRCS violation was based on the commission of a non-violent drug

possession offense. (*People v. Armogeda, supra*, 233 Cal.App.4th 428.) The trial court ruled that it was not sentencing appellant for methamphetamine use but was imposing the jail sanction for not attending the treatment programs "designed to solve the problem that brought him here today." Appellant was ordered to serve 180 days county jail with 86 days credit.

Discussion

Appellant argues that his procedural due process rights were violated because he was not arraigned within 10 days of his arrest and did not receive a *Morrissey*-compliant probable cause hearing. The PRCS revocation procedures here are consistent with constitutional, statutory, and decisional law. These procedures do not violate concepts of equal protection or due process of law. We so held in *People v. Gutierrez* (2016) 245 Cal.App.4th 393 (petition for review filed April 11, 2016, S233681). We follow our own precedent.

Appellant contends that his due process rights were violated because the probable cause hearing was not conducted by a neutral hearing officer. We reject the argument because the hearing officer (Meza) was not appellant's supervising probation officer or the one who reported the PRCS violation or recommended the revocation. Appellant was afforded a neutral hearing officer. (See *Morrissey, supra*, 408 U.S. at p. 486 [33 L.Ed.2d at p. 497]; *Williams, supra*, 230 Cal.App.4th at p. 647 [probable cause finding must be by someone not directly involved in the case].) The denial of a *Morrissey* compliant probable cause hearing does not warrant reversal unless the violation results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) Appellant makes no showing that any due process defect in the probable cause hearing prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Moore* (1975) 45 Cal.App.3d 285, 294.)

Custodial Sanction - 180 Days County Jail

Relying on *People v. Armogeda, supra*, 233 Cal.App.4th 428, appellant claimed that Proposition 36 and section 3063.1 prohibit custodial sanctions if the PRCS violation is based on the commission of a non-violent drug possession offense. Section

3063.1 does not apply to a parolee who has a serious or violent felony conviction within the meaning of section 667.5 or section 1192.7. (§ 3063.1, subd. (b)(1).) Appellant's prior strike conviction was for first degree burglary, a serious felony. (§ 1192.7, subd. (c)(1)(18).)

Disposition

The judgment (order revoking PRCS) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Donald Coleman, Judge
Superior Court County of Ventura

Stephen P. Lipson, Public Defender, Michael C. McMahon, Chief Deputy Public Defender, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, Nathan Guttman, Deputy Attorney General, for Plaintiff and Respondent.