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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.

BRYCE ALLEN AUSTIN,

Defendant and Appellant.

E064717

(Super.Ct.No. BAR1500921)

OPINION

APPEAL from the Superior Court of Riverside County. Judith Fouladi, Judge.

Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Christine Levingston Bergman, Deputy Attorneys General, for Plaintiff and Respondent.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. PROCEDURAL HISTORY**

On April 2, 2012, in case No. BAF1200069, defendant and appellant Bryce Allen Austin pled guilty to one count of commercial burglary under Penal Code<sup>1</sup> section 459. The trial court dismissed one count of receiving stolen property under section 496, subdivision (a), and three prison prior convictions under section 667.5, subdivision (b). The court also suspended imposition of sentence and granted defendant formal probation for three years, on the condition that he serve 270 days in custody, with placement in the work release program, along with other terms and conditions. Moreover, defendant was on probation in case No. BAM1101827. On that same date, defendant admitted violation of his misdemeanor probation. He was reinstated in summary probation, continuing the same terms and conditions, and an additional term of 20 days in the work release program, consecutive to the felony sentence in case No. BAF1200069.

On July 25, 2012, defendant pled guilty to a charge of being under the influence of a controlled substance, Health and Safety Code section 11550, under case No. BAM1200411. Defendant also admitted that this constituted a violation of probation on case No. BAF120069, the instant matter, and on the misdemeanor case No. BAM1101827. With respect of case No. BAF1200069, probation was reinstated on the original terms and conditions, including the serving of 168 days in county jail that were not served under the original probationary terms and conditions.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

In the underlying case, case No. BAF1200069, defendant admitted a probation violation. The court reinstated probation, terminated work release, and ordered defendant to serve his remaining 168 days of custody in county jail, consecutive to the other terms of 90 and 10 days in custody, for a total of 268 days in custody. The remaining terms and conditions of his probation were reinstated.

On December 13, 2013, the probation department filed an allegation of probation violation for defendant's failure to report to his probation officer as directed. Defendant admitted the violation on January 9, 2014. The trial court reinstated probation and ordered defendant to serve an additional 45 days in jail.

Three days later, on January 17, 2014, the People filed a petition to revoke probation alleging that defendant violated probation by possessing methamphetamine under Health and Safety Code section 11377 subdivision (a).

On May 14, 2014, defendant admitted that he violated probation. The trial court reinstated probation with the condition that defendant complete a one-year program administered by the Salvation Army.

On November 18, 2014, the probation department filed an allegation that defendant had violated probation by failing to appear for arraignment in the methamphetamine possession case, case No. BAM1401796, and for failing to report to probation after being discharged from the Salvation Army program.

On December 4, 2014, defendant admitted that he violated the terms of his probation, and the court sentenced him to two years in state prison with credit for 325 days.

On June 25, 2015, defendant was released on postrelease community supervision (PRCS).

On July 31, 2015, defendant admitted to violating PRCS by carrying a stun baton; he signed a waiver of hearing for 60 days.

On October 7, 2015, defendant was arrested for violating his PRCS when he was found in possession of methamphetamine. The next day, October 8, the probation officer filed a written report for violation of PRCS, alleging that defendant was arrested on October 7 for possessing methamphetamine. This document was filed with the superior court on October 15, 2015.

On October 16, 2015, the trial court held an ex parte probable cause review hearing. The trial court found probable cause to support revocation and preliminarily revoked supervision. The trial court set the matter for arraignment/settlement conference on October 20, 2015, and set a hearing on the petition for revocation of community supervision on November 20, 2015.

On October 20, 2015, defendant moved to dismiss the petition for failure to arraign him within 10 days of his arrest. The trial court denied the motion. Defendant admitted the probation violation and the trial court reinstated PRCS with the condition that defendant serve 88 days in county jail, with a release date of November 19, 2015.

Defendant filed a notice of appeal on October 21, 2015, and obtained a certificate of probable cause.

## ANALYSIS

### A. THE PRCS REVOCATION PROCESS DID NOT DEPRIVE DEFENDANT OF HIS RIGHT TO DUE PROCESS

Defendant contends that the trial court's revocation of his PRCS violated his rights to due process and equal protection.

For the reasons set forth below we affirm the trial court's order.

#### 1. *BACKGROUND*

On the date set for arraignment and settlement conference, defense counsel moved to dismiss the case because defendant's due process rights were violated by the failure to have a hearing within a reasonable time. In support of his claim, defendant relied on *Williams v. Superior Court* (2014) 230 Cal.App.4th 636 (*Williams*). Defendant argued that the PRCS revocation process violated his procedural due process rights because he did not receive an arraignment date within 10 days of his arrest.

The trial court denied the motion, explaining that *Williams* did not apply to a person on PRCS because that case only addressed the parole revocation process, not the PRCS revocation process. Therefore, the due process requirements that require a court to arraign a defendant within a reasonable amount of time applied. The trial court noted that it did engage in a probable cause determination on October 16, and set October 20 for defendant's arraignment. The court found that defendant had not been "unduly delayed for purposes of arraignment."

## 2. DUE PROCESS

In this case, defendant contends that a delay in his PRCS revocation process violated his due process rights.

The People argue that the issue may be moot because defendant would have served his 88-day sentence by the time his appeal is decided. However, “[w]e have discretion to decide a case that, although moot, poses an issue of broad public interest that is likely to recur.” (*People v. Osorio* (2015) 235 Cal.App.4th 1408, 1411, citing *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1086.) This is such a case.

We recognize that in *Spencer v. Kemna* (1998) 523 U.S. 1, 18, the Supreme Court refused to reverse the district court’s determination that a defendant’s habeas corpus petition, challenging his parole revocation, was moot because he had completed his term of imprisonment underlying the parole revocation, and it was therefore not certain that he would suffer any injury due to any error on the parole revocation. Under California’s penal system, any future interactions between defendant and the justice system will likely bring to light defendant’s parole revocation. Should defendant suffer a further criminal conviction, the parole revocation may be used as part of his sentencing determination. The parole revocation also may be used against defendant in other noncriminal arenas, such as employment decisions or child custody matters. In short, we cannot say with reasonable certainty that defendant’s release from parole moots his claim that the trial court erred in finding his failure to appear was willful.

A parole revocation order is a postjudgment order affecting the substantial rights of the party, and is therefore appealable. (§ 1237, subd. (b).) The issue defendant raises

on appeal is a matter of broad public interest that is likely to recur. Therefore, we exercise our discretion to consider the merits of this appeal.

The Criminal Justice Realignment Act of 2011 changed the procedures for the supervision of convicted felons following release from custody. The Legislature's stated purpose for Realignment was "'to reduce recidivism and improve public safety, while at the same time reducing corrections and related criminal justice spending.'" (*People v. Rajanavagam* (2012) 211 Cal.App.4th 42, 49.) One change to the supervision procedures was codified in the Postrelease Community Supervision Act of 2011. (§ 3450.) PRCS transferred postrelease supervision of certain felons who had committed nonserious, nonviolent crimes to local, county-run programs that utilize community-based punishment, evidence-based practices, and enhanced supervision strategies. (§ 3450, subd. (b)(5).)

Under Realignment, parole and PRCS are two separate forms of supervision. (*People v. Espinoza* (2014) 226 Cal.App.4th 635, 639.) Unlike parole the Department of Corrections and Rehabilitation has no jurisdiction over the persons subject to PRCS. (§ 3457.) Instead, persons subject to PRCS are supervised by local probation officers, and revocation proceedings are handled by local superior courts. Also, unlike parole violators, persons subject to PRCS cannot be returned to prison for violations of PRCS. (§ 3458.)

Section 1203.2 generally sets forth the procedures to be followed upon suspicion that an individual on PRCS or parole is violating the terms of his or her program. In such a case, a probation or peace officer "may . . . rearrest the supervised person and bring him

or her before the court . . . .” (§ 1203.2, subd. (a).) However, before the first court appearance (or in lieu of it, at the defendant’s request), individuals on PRCS may receive an informal hearing before the supervising county agency. (§ 3455, subds. (a) [individual on supervision may waive court hearing and accept modification of PRCS], (b)(1) [peace officer may arrest individual suspected of violating PRCS and “bring him or her before the supervising county agency”].)

In the event that the individual remains in custody and the parties seek a formal court hearing on revocation, notice of the allegations of violation of supervision “may be given to the supervised person upon his or her first court appearance in the proceeding.” (§ 1203.2, subd. (b)(2).) A court then receives the written report from the supervising agency and determines whether there is reason to believe that the alleged violations occurred. If so, the court may revoke and terminate supervision if the interest of justice so requires. (§ 1203.2, subds. (a)-(b).) The formal revocation hearing in which the court makes the decision “shall be held within a reasonable time after the filing of the revocation petition,” and the individual may be held in custody pending the formal hearing “for any reason in the interests of justice . . . .” (§ 3455, subd. (c).)

These procedures set forth above were designed to comply with the minimum due process requirements of *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*), and *People v. Vickers* (1972) 8 Cal.3d 451 (*Vickers*). (Legis. Counsel’s Dig., Sen. Bill No. 1023, Stats. 2012 (2011-2012 Reg. Sess.) [section 1203.2 “incorporate[s] the procedural due process protections held to apply to probation revocation procedures under [*Morrissey*], and [*Vickers*], and their progeny”].) In particular, the following protections

are required under *Morrissey*: “(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.” (*Morrissey*, at p. 489.<sup>2</sup>)

An appellate court reviews a trial court’s revocation of supervision under section 1203.2 under the substantial evidence standard of review in which “great deference is accorded the trial court’s decision . . . .” (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.)

In this case, under section 1203.2, *Morrissey*, *supra*, 408 U.S. 471, and *Vickers*, *supra*, 8 Cal.3d 451, defendant’s due process rights were not violated during the PRCS revocation process. In this case, defendant was arrested on October 7, 2015, for violating his PRCS. The next day, the probation department filed a written report for violation of PRCS, which was attached to the petition for revocation. According to the petition, the supervising agency established probable cause for the alleged violation on October 8,

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<sup>2</sup> Under *Morrissey*, a reasonable time period of the final revocation hearing is defined as no more than two months after arrest. (*Morrissey*, *supra*, 408 U.S. at pp. 487-488.)

2015, one day after defendant's arrest; there are no other details regarding this finding in the record.

On October 16, 2015, nine days after defendant's arrest, the trial court held an ex parte hearing, a "Probable Cause Review," where it found probable cause to support revocation, and summarily revoked supervision. The court appointed a public defender to represent defendant, and scheduled the arraignment/settlement conference (PRCS) for October 20, 2015.

On October 20, 2015, 13 days after defendant's arrest, the trial court held the arraignment and settlement conference. Defendant was given the opportunity to challenge the allegations against him. However, instead of challenging the allegations, defendant simply submitted on the allegations.

Nonetheless, defendant contends that his due process rights were violated because he did not receive a formal arraignment in court within 10 days of his arrest. In support of his argument, defendant relies on *Williams, supra*, 230 Cal.App.4th 636. "*Williams* held that a parolee who remains in custody pending a formal revocation hearing has a due process right to an in-court arraignment within 10 days of arrest, a probable cause hearing within 15 days after the arrest, and a revocation hearing within 45 after arrest. [Citation.] It did not consider whether due process requires the same time limits be observed in a PRCS revocation proceeding." (*People v. Gutierrez* (2016) 245 Cal.App.4th 393, 402 (*Gutierrez*).)

In a recent decision, the *Gutierrez* court noted, as we noted above, that "parole and PRCS, while similar in some respects, remain two separate forms of supervision.

[Citation.] One significant difference between the two systems appears in the beginning stage of each process. After a person subject to PRCS is arrested for an alleged violation of his or her PRCS terms, that person is first brought before the supervising agency, which determines whether probable cause supports the alleged PRCS violations.

[Citation.] A parolee arrested for violating the terms of his or her parole is initially brought before the court.” (*Gutierrez, supra*, 245 Cal.App.4th at p. 402.)

The *Gutierrez* court stated that “[t]he *Williams* court was concerned that a parolee not be held in custody indefinitely before that initial court hearing. It imposed the 10-day arraignment requirement to insure that parolees would be held in custody for no longer than the statutory flash incarceration period [citation.], without appearing in court.”

(*Gutierrez, supra*, 245 Cal.App.4th at p. 403.) The *Gutierrez* court, however, decided not to address whether this requirement applied in PRCS revocation proceedings because the defendant “fail[ed] to demonstrate he was prejudiced by the fact he did not appear in court within 10 days of his arrest.” (*Id.* at p. 403.)

Here, as noted above, defendant was arrested on October 7, 2015, and a petition was filed on October 15, 2015. A probable cause hearing was conducted on October 16, 2015; defendant was not present at the hearing. Defendant attended his arraignment on October 20, 2015. Defendant has failed to allege any prejudice to him because of this three-day delay. We, like the court in *Gutierrez*, need not address whether the 10-day arraignment requirement under *Williams* in parole proceedings applies to PRCS revocation proceedings because defendant has failed to demonstrate that “he was

prejudiced by the fact he did not appear in court within 10 days of his arrest.” (*Gutierrez, supra*, 245 Cal.App.4th at p. 403.)

### 3. *EQUAL PROTECTION*

Defendant also claims that his equal protection rights under the federal and state Constitutions were violated because he is similarly situated to a parolee, but was provided fewer procedural safeguards than a parolee.

“‘[A] threshold requirement of any meritorious equal protection claim ‘is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner. [Citation.]’ [Citation.] ‘This initial inquiry is not whether persons are similarly situated for all purposes, but ‘whether they are similarly situated for purposes of the law challenged.’ [Citation.] [Citation.]’” In addition, reasonable classifications drawn between similarly situated persons do not violate equal protection ‘provided the classifications are made with a legitimate goal to be accomplished.’” (*Gutierrez, supra*, 245 Cal.App.4th at p. 403.)

In this case, defendant has failed to show that he is similarly situated to a current parolee. “[P]arole is reserved for those who have committed serious or violent felonies, are high-risk sex offenders or are mentally disordered. [Citation.] Those who have committed non-serious, nonviolent felonies are subject to PRCS. [Citation.] Distinguishing between these two classes of offenders does not violate equal protection because persons convicted of different crimes are not similarly situated for equal protection purposes. [Citation.] The Legislature could reasonably distinguish between these two groups and rationally conclude that serious or violent felons should be

supervised under more formal procedures than those applied to other felons.” (*Gutierrez, supra*, 245 Cal.App.4th at pp. 403-404.)

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

HOLLENHORST  
Acting P. J.

CODRINGTON  
J.