

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

HERIBERTO EDDIE CHAPA,

Defendant and Appellant.

F062072

(Super. Ct. No. MCR034557A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Joseph A. Soldani, Judge.

Rita Swenor, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles French and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Wiseman, Acting P.J., Poochigian, J. and Franson, J.

Appellant, Heriberto Eddie Chapa, was placed on probation following his no contest plea to possession of heroin for sale (Health & Saf. Code, § 11351) and admission of a prior conviction enhancement (Health & Saf. Code, § 11370.2, subd. (a)).

On appeal, Chapa contends the court violated his right to procedural due process by its failure to issue a written statement of reasons for revoking his probation. We affirm.

FACTS

On March 7, 2009, a Madera police officer observed Chapa and a woman as they appeared to be engaged in drug activity. The officer approached Chapa and, during a consensual search, found two baggies containing a total of six grams of heroin on Chapa.

On March 10, 2009, the district attorney filed a complaint charging Chapa with possession for sale of heroin (count 1/Health & Saf. Code, § 11351) possession of heroin (count 2/Health & Saf. Code, § 11350, subd. (a)), a prior conviction enhancement in count 1, and two prior prison term enhancements (Pen. Code, § 667.5, subd. (b)).

On March 23, 2009, Chapa pled no contest to count 1 and admitted the prior conviction enhancement in exchange for the dismissal of the remaining count and enhancements, a stayed seven-year term, and a grant of probation.

On April 21, 2009, the court sentenced Chapa to an aggregate seven-year term, the aggravated term of four years on his possession for sale of heroin conviction and a three-year prior conviction enhancement. The court then suspended execution of sentence and placed Chapa on probation for five years on certain terms and conditions, including that he complete the Delancey Street program.

On June 11, 2009, the probation department filed a petition to revoke Chapa's probation alleging that he walked out of the Delancey Street program and failed to report to the probation officer.

On May 14, 2010, the court found the second allegation true.

On August 4, 2010, the court reinstated probation.

On August 13, 2010, the probation department filed a second petition to revoke Chapa's probation alleging that on July 15, 2009; December 14, 2009; February 24, 2010; and April 27, 2010, he violated the probation condition requiring him to obey all laws.

On February 7, 2011, the court conducted a probation violation hearing in conjunction with the preliminary hearing in case No. MCR035694. At this hearing Madera Police Officer Nick Webster testified that on July 15, 2009, he made a traffic stop of a car driven by Chapa. Chapa told the officer that he did not have a license and gave him a false name. However, after Chapa's passenger identified him as Eddie Chapa, Chapa admitted lying to the officer about his name. Soon afterwards the officer discovered that Chapa was on probation and that he had an outstanding felony arrest warrant. During a search incident to arresting Chapa, the officer found two Tylenol with Codeine pills. When asked if he had a prescription for the pills, Chapa admitted that he did not.

At the conclusion of the hearing the court held Chapa to answer to several charges in a complaint that had been filed in case No. MCR035694, and it found that Chapa violated his probation in the instant matter.

On March 7, 2011, the court revoked Chapa's probation and sentenced him to the previously suspended, aggregate seven-year term. So far as the record shows, the court did not issue a written statement of reasons and evidence supporting the revocation of Chapa's probation and defense counsel did not object in the trial court to the court's failure to do so.

DISCUSSION

“‘[A] probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey v. Brewer* [(1972) 408 U.S. 471 [33 L.Ed.2d 484, 92 S.Ct. 2593]].’ [Citation.] These conditions include that probationers be advised of their right to a formal hearing on the alleged probation violations [citations],

of their right to counsel [citation], their right to present evidence [citation], their right to confront and cross-examine witnesses [citation], and their right to disclosure of the evidence to be presented against them [citation]. Unless waived, probationers are also entitled to receive a written statement of the reasons for and evidence supporting the revocation of probation. [Citation.]” (*In re Wagner* (2005) 127 Cal.App.4th 138, 146.)

The trial court here did not issue a written statement of the reasons for and the evidence supporting the revocation of Chapa’s probation. However, Chapa forfeited this issue on appeal by his failure to object in the trial court. (*People v. Saunders* (1993) 5 Cal.4th 580, 589-590; also cf. *People v. Scott* (1994) 9 Cal.4th 331, 355 [failure to object in the trial court forfeits claims involving “sentences which, though otherwise permitted by law, were imposed in a procedurally or factually flawed manner].) Moreover, Chapa fails to explain how he was prejudiced by the court’s failure to issue the requisite written statement. Accordingly we reject Chapa’s procedural due process claim.

DISPOSITION

The judgment is affirmed.