IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. ALLEN DIMEN DELEON, Defendant and Appellant.	No. S230906 First District Court of Appeal No. A140050 Solano County No. FCR382185

Appeal from a Judgment of the Superior Court
of the County of Solano, State of California

Honorable Robert Bowers, Judge

APPELLANT'S CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS

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APPELLANT'S CONSOLIDATED ANSWER
TO AMICUS CURIAE BRIEFS

STATEMENT OF THE ISSUE

In light of the changes made to the parole revocation process in the 2011 realignment legislation (Stats. 2011, ch. 15; 2012, ch. 43), is a parolee is entitled to a probable cause hearing conducted according to the procedures outlined in *Morrissey v. Brewer* (1972) 408 U.S. 471 before parole can be revoked?

INTRODUCTION

This Consolidated Answer to Amicus Curiae Briefs is designed to respond to the Los Angeles County District Attorney's contentions in their amicus brief which require further discussion for proper determination of the issue raised on appeal. It also elaborates on information set forth in the amici briefs prepared by the San Francisco County Public Defender and the Orange County Public Defender.

This brief does not respond to issues or contentions that appellant believes were adequately discussed in his Opening and Reply Briefs on the Merits. Further, the Amicus Curiae Brief of the San Francisco Public Defender addresses certain legal concepts that appellant joins but will not repeat here. Appellant intends no waiver of any of these issues or contentions by not expressly reiterating them herein.

ARGUMENT

I. APPELLANT'S PAROLE REVOCATION HEARING, CONDUCTED AFTER THE TRIAL COURT FAILED TO HOLD A PRELIMINARY PROBABLE CAUSE HEARING, DID NOT COMPLY WITH PENAL CODE SECTIONS 1203.2 OR 3000.08, AND VIOLATED APPELLANT'S DUE PROCESS RIGHTS

A. Parole Revocation is Different from Probation and PRCS Revocations

The Los Angeles District Attorney (District Attorney) begins by incorrectly conflating parole revocation and probation revocation. She wrongly submits that "parole violations and probation violations should be treated uniformly." (LADA at 6, 12.) She also incorrectly states, "Thus, to effectuate the legislative intent for consistency in revocation procedures among different types of supervision, in practice, because the court need not conduct formal probable cause hearings for probation revocations, courts need not conduct them for PRCS or parole revocations. (Couzens & Bigelow, supra, at p. 151.)" (LADA at 13.) This argument is unavailing, as it improperly conflates revocations of parole and revocations of probation or post-release community supervision (PRCS). Further, there was clearly more to the legislative intent of Realignment than consistency. Rehabilitation is a primary goal in post-incarceration supervision following Realignment.

There are valid justifications for the procedural differences between parole and probation revocation. Unitary hearings may be sufficient for probation; a defendant who allegedly violates his probation is still involved in an ongoing criminal case in court, with the full panoply of criminal procedural rights. While *Morrissey v. Brewer* (1972) 408 U.S. 471 addressed only revocation of parole, in *People v. Vickers* (1972) 8 Cal.3d 451, 461,

this Court extended *Morrissey* due process protections to probation revocations. However, as appellant acknowledged in his opening brief on the merits (OBM 27-29), this Court has held, "Since 'the precise nature of the proceedings for [probation] revocation need not be identical' to the bifurcated *Morrissey* parole revocation procedures, so long as 'equivalent due process safeguards' assure that a probationer is not arbitrarily deprived of his conditional liberty for any significant period of time [citation], a unitary hearing will usually suffice in probation revocation cases to serve the purposes of the separate preliminary and formal revocation hearings outlined in *Morrissey.* [Citations.]" (*People v. Coleman* (1975) 13 Cal.3d 867, 894-895, fn. omitted.) Therefore, although *Coleman* authorized unitary revocation hearings in the probation context, this Court clearly contemplated the continued use of preliminary probable cause hearings in the parole revocation context.

There are valid justifications for the procedural differences between PRCS and traditional parole revocation proceedings, each of which involves different types of offenders. Parole applies to high-level offenders, i.e., third strikers, high-risk sex offenders, and persons imprisoned for serious or violent felonies or who have a severe mental disorder and committed specified crimes. (Pen. Code, § 3451, subd. (b).) All other persons are placed on PRCS. (Pen. Code, §§ 3000.08, subd. (b); 3451, subd. (a).) Under the Realignment Act, parole and PRCS are two separate forms of supervision. (*People v. Espinoza* (2014) 226 Cal.App.4th 635, 639.) There is no requirement that PRCS revocations and parole revocations use the identical procedures or timelines.

Penal Code section 1203.2 describes the general procedure to be followed when an individual is subject to revocation under distinct forms of supervision. That different types of supervision are dealt with in the same statute does not demonstrate a legislative intent to treat them all the same throughout all of their different proceedings. Parole revocations are governed by section 3000.08, which requires that the supervising agency file a superior court petition pursuant to section 1203.2 for revocation of parole.

Penal Code section 3044, subdivision (a), provides that the parolee is entitled to a probable cause hearing not later than 15 days following his or her arrest for violating parole and a revocation hearing no later than 45 days following his or her arrest. Citing section 3044, subdivision (a), *Williams v. Superior Court* held that a *Morrissey*-compliant probable cause hearing must take place within 15 days of a parolee's arrest. (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 657-685.) Section 3455, subdivision (c), which governs PRCS revocations, makes different provisions. A unitary revocation hearing in which the supervising agency can make "waiver offers" and in which the defendant can admit a PRCS violation, is authorized by section 3455, subdivision (a).

The District Attorney's argument was recently rejected in *People v. Byron* (2016) 246 Cal.App.4th 1009, where the appellant argued that parole, probation, and PRCS revocation hearings are constitutionally indistinguishable and subject to "uniform supervision revocation process." Relying on *Williams v. Superior Court, supra,* 230 Cal.App.4th 636, the appellant in *Byron* appealed an order revoking her PRCS supervision and requiring her to serve 140 days in jail. She contended that her procedural due process

rights were violated because she was not arraigned in superior court within 10 days of her arrest or provided with a *Morrissey*-compliant probable cause hearing. She urged that PRCS revocations must afford *Morrissey*-compliant protections. The Court of Appeal affirmed, holding that nothing in the PRCS revocation procedures employed in the case violated due process. There was no right to *Morrissey*-compliant probable cause hearings in the PRCS revocation context. The *Byron* court stated, "The argument is based on an uncodifed section of the Postrelease Community Supervision Act of 2011 (Realignment Act) which also provides: 'By amending . . . subdivision (a) of . . . Section 1203.2 of the Penal Code, it is the intent of the Legislature that these amendments simultaneously incorporate the procedural due process protections held to apply to probation revocation procedures under *Morrissey v. Brewer* (1972) 408 U.S. 471, and *People v. Vickers* (1972) 8 Cal.3d 451, and their progeny.' (Vol. 6 West's Cal. Legislative Service (Stats 2012) ch. 43, Sec. 2(b), p. 1969.)" *Byron* continued, "To so rule, we would have to rewrite the various statutes which treat parole, probation, and PRCS differently. That is not our legitimate function. (See e.g., *People v. Buena Vista Mines* (1996) 48 Cal.App.4th 1030, 1034.) If the legislature wants 'uniform' rules, it should enact uniform rules, not separate statutory revocation procedures for parole, probation, and PRCS." (*People v. Byron, supra,* at 1014.)

The District Attorney's argument is based upon a faulty conflation of procedures for different types of revocation. Thus, nothing the District Attorney argues compels a different view of the law than that set forth in appellant's briefing on the merits. *People v.*

Byron, supra, 246 Cal.App.4th 1009 provides the better-reasoned argument, and should be followed here.

The issue before this Court relates to parole revocation only. However, should this Court seek to establish uniform procedures for all types of revocation, then for all of the reasons set forth in appellant's briefs on the merits, as well as the argument of the appellant in *People v. Byron, supra,* 246 Cal.App.4th 1009, this Court should hold that a preliminary probable cause hearing is a mandatory requirement of due process for all revocations.

The District Attorney cites several times to Couzens & Bigelow, Felony Sentencing After Realignment, May 2016. That is not dispositive legal authority. That treatise states, "The Criminal Justice Realignment Act of 2011 makes significant changes to the sentencing and supervision of persons convicted of felony offenses. The new legislation amends a broad array of statutes concerning where a defendant will serve his or her sentence and how a defendant is to be supervised on parole. There are a number of issues related to this legislation, some of which will only be resolved by further changes by the Legislature or interpretation by the courts. The following is a discussion of some of the sentencing issues related to realignment *as the statutes currently exist* after the enactment of cleanup legislation." (*Id.* at 6; see also *People v. Curry* (2016) 1 Cal.App.5th 1073, 1082 [referring to "a publication by the authors of the leading treatise on sentencing"]; *People v. Adelmann* (2016) 2 Cal.App.5th 188; 207 Cal.Rptr.3d 301, 304 [calling Couzens and Bigelow "legal commentators"].)

The District Attorney alludes to a passage in Couzens & Bigelow which states in full: "In July 2012 the Governor signed into law budget trailer bills that included various statutory amendments designed to promote uniform revocation procedures for probation, mandatory supervision, postrelease community supervision, and parole. The legislation was also designed to simultaneously incorporate the procedural due process protections held to apply to probation revocation procedures under *Morrissey v. Brewer, supra,* 408 U.S. 471, and *People v. Vickers* (1972) 8 Cal.3d 451, and their progeny. (2011 Realignment Legislation, SB 1023, Sec. 2(b), effective June 27, 2012.) As a result, courts generally will apply longstanding revocation procedures under section 1203.2 to parole revocations." (LADA at 5, citing Couzens & Bigelow, *supra,* at p. 124.)

This statement of Couzens & Bigelow does not compel a different result. The above passage says only "generally." A design to promote uniform revocation procedures does not mean that all procedures across the board must be exact. The passage refers to both *Morrissey* and *Vickers,* which come to different conclusions regarding preliminary probable cause hearings for parole and probation.

The District Attorney also notes that Couzens & Bigelow says that because courts need not conduct formal probable cause hearings for probation revocations, courts need not conduct them for PRCS or parole revocations. (Couzens & Bigelow, *supra,* at 151; LADA at 13.) Later on that same page, however, the treatise says something the District Attorney fails to mention: "The express holding of *Williams* concerns violations of parole. While nothing in the opinion suggests its mandated procedure should be extended to other

forms of supervision, its holding distinguishes the application of *Woodall* and *Coleman* to parolees. (*Williams* at pp. 654-656.) Courts may anticipate a *Williams*-type challenge in circumstances where detention has become prolonged. Prudent courts may wish to implement uniform procedures for the arraignment and determination of probable cause for all persons arrested for violations of supervision." (Couzens & Bigelow, *supra,* at 151.)

Couzens & Bigelow thus clearly acknowledges the distinctions made by *Williams v. Superior Court, supra,* 230 Cal.App.4th 636 in parole revocation proceedings. It is up to this Court to decide which position to adopt; *Williams* is clearly the better position.

Appellant disagrees with the District Attorney's statement, "The statutes do not contain timetables or schedules of when hearings must be held . . . . " (LADA at 12.) Tellingly, the District Attorney does not discuss Penal Code section 3044 at all. That section deals solely with a parolee's rights upon revocation of parole, and requires a preliminary probable cause hearing within 15 days. But *Williams v. Superior Court, supra,* 230 Cal.App.4th 636 and *People v. Byron, supra,* 246 Cal.App.4th 1009 properly acknowledge the continuing application of the statutes governing parole revocation, including Penal Code section 3044, in the parole revocation context.

B. Appellant Was Denied Due Process at His Revocation Hearing

The District Attorney incorrectly argues that appellant "received due process under *Morrissey* and sections 1203.2 and 3000.08" (LADA at 15), and that "prompt probable cause review of the charges and the parole violation report by a judicial officer as specified in section 1203.2, subdivisions (a)(1) and (b)(2) guarded against the risk of an erroneous

deprivation of liberty pending a fully revocation hearing." (LADA at 17.) The District Attorney elaborates that appellant's parole revocation procedure "included notice and the appointment of counsel, a timely arraignment and judicial determination that probable cause existed to revoke his parole, the functional equivalent of a probable cause hearing, and a full and expeditious adversarial unitary revocation hearing." (LADA at 15.) Due process was not accorded as appellant was not given the opportunity to appear and speak on his own behalf, to present witnesses or evidence, or to question his parole agent who authored the probable cause determination form and parole violation report. The judicial determination of probable cause was not sufficient as it was an ex parte proceeding for which appellant was not present.

Nor was appellant provided with the "functional equivalent of a preliminary probable cause hearing." (LADA at 20.) As the trial judge below pointed out, the case was on for a motion to dismiss (RT [9/25/13 4), and the parties were "litigating whether [appellant] had a probable cause determination within a reasonable amount of time." (RT [9/25/13] 9.) The parties did not litigate whether or not there was probable cause, which would have been the purpose of doing things right and having a probable cause hearing.

Appellant disagrees with the District Attorney's procedural due process analysis under *Mathews v. Eldridge* (1976) 424 U.S. 319, directing this Court to his own balancing (OBM at 21-26) which reached the conclusion that a parolee must be afforded a prompt preliminary probable cause hearing , and also to the Attorney General's argument in their answer brief on the merits that due process was not met in this case. (ABM at 35-36.)

Appellant disagrees with the District Attorney's statements that "[t]here are no additional procedures that could add more confidence to the determination of temporary detention at this stage of the revocation proceedings" (LADA at 17), and that "requiring a preliminary probable cause hearing adds little benefit to the fair determination of parole revocation." (LADA at 19.) To the contrary, evidentiary rules and cross-examination increase the likelihood that people will not be wrongly held accountable and incarcerated for certain charged conduct against them. Appellant further disagrees with the District Attorney's attempts to fault appellant for the timeliness of the proceeding in this case because he challenged the failure to hold a probable cause hearing. (LADA at 18.) Trial counsel was protecting appellant's rights; the prosecutor requested a written motion; and the judge ordered briefing and continued the hearing. (RT [9/11/13] 5, 7.) Appellant also takes issue with the District Attorney's statement, "When the motion to dismiss was heard and denied 14 days later, he had the functional equivalent of a preliminary probable cause hearing with all of its attendant due process rights." (LADA at 18.) Appellant cites without avail to *People v. Byron, supra,* 246 Cal.App.4th 1009; as argued above, it is fallacious to equate parole with PRCS. Appellant simply did not receive what he was entitled to at a prompt probable cause hearing.

Morrissey v. Brewer, supra, 408 U.S. 471, and California's statutory scheme, mandate this particular due process requirement for parole revocation. While due process is flexible, there are still certain basic minimum standards that due process requires. *Fuentes v. Shevin* (1975) 407 U.S. 67, 80, notes that the "central meaning of procedural

due process" is the "right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Greenholtz v. Inmates, Nebraska Penal and Correctional Complex* (1979) 442 U.S. 1, 13, notes that the function of legal process as that concept is embodied in the Constitution and in the realm of factfinding is to minimize the risk of erroneous decisions. Preliminary probable cause hearings serve these fundamental aims of procedural due process.

II. ALTHOUGH DUE PROCESS IS FLEXIBLE, A PRELIMINARY PROBABLE CAUSE HEARING IS A MANDATORY REQUIREMENT OF DUE PROCESS, AND THE POWER OF LOCAL COURTS TO DEVELOP REVOCATION RULES REMAINS SUBJECT TO THE SUPERVISORY ROLE OF THIS COURT TO ENSURE THE EQUAL AND ORDERLY ADMINISTRATION OF JUSTICE

A. This Court Must Set an Overarching Rule of Due Process

The District Attorney argues that the flexibility of due process does not mandate preliminary probable cause hearings, and local courts should develop their own revocation rules. (LADA at 2-3, 6, 20.) The District Attorney's quotation from Governor Brown's State of the State address does not signify that Realignment has transferred all powers to the county level. (LADA at 20-21.) Local governments are not in a position to define what process is due. Such a completely localized system could lead to equal protection challenges, as noted in appellant's Reply Brief on the Merits. (RBM at 3, 20.) Nor is this conclusion consistent with 2011 Realignment legislative intent. Due process may be flexible, but it is not completely inchoate. There must be a statewide rule. This Court must determine what process is due.

Appellant disagrees with the District Attorney's statement that "The Realignment Legislation embraced the principles of 'subsidiarity' when it created a new system for handling parole and probation revocations." (LADA at 20.) There is no authority cited for this proposition. Instead, the District Attorney goes on to discuss the concept of "subsidarity" found in a concurring opinion from a Texas appellate court case. (LADA at 20, discussing *Kelly v. State* (2014) 436 S.W.3d 313.) She advocates "subsidiarity" in permitting local courts to adopt local rules for parole revocation. *Kelly* held that courts of

appeal have the ultimate responsibility to ensure that indigent appellants are granted access to appellate records so they may file responses to no-issue briefs. In a one-paragraph opinion – joined by no other justice – the concurring justice in *Kelly* invoked "subsidiarity" in support of her belief that imposing new requirements on the courts of appeal with regard to no-issue briefs would result in an unnecessary micromanaging of those courts' administrative procedures, and would absolve appellate lawyers of their official duty to assist their clients in such cases up to the point when they are given permission to withdraw. Perhaps the District Attorney is saying that courts should not be conscripted into handling matters for which local attorneys should be responsible. Perhaps the District Attorney is suggesting that this Court will be imposing an unnecessary burden on the superior courts if it mandates probable cause hearings in parole violation cases. But the *Kelly* court settled on a statewide rule. Subsidiarity – as vaguely defined – did not carry the day in *Kelly.*

Appellant further disagrees that "Realignment's purpose was not to impose uniformity throughout the State of California; its purpose was to treat all supervised persons in a particular locality uniformly." (LADA at 21.) There are no legal citations after that statement. The passage from the Legislative Counsel's Digest cited by the District Attorney does not give full power to the counties. (LADA at 21.) To the contrary, the Legislative Counsel's Digest to AB 109 states at paragraph 13: "By imposing additional burdens on local government entities, this bill would impose a *state-mandated* local program." (Emphasis added.)

The District Attorney adds, "In order to effectuate the purpose of Realignment, local courts must be free to adopt local rules." (LADA at 21.) No citation to legal authority is provided here either. Local courts may adopt some rules, but only within the parameters of due process, which, in the context of a parole revocation proceeding, requires a preliminary probable cause hearing. The United States Supreme Court and the Legislature - in the form of Penal Code section 3044 - have said what process is due upon revocation of parole.

B. Requiring A Probable Cause Hearing Within 15 Days of Arrest Would Not Impose an Undue Burden on Trial Courts

The District Attorney maintains that due process does not require a probable cause hearing unless there is a significant delay between the time of arrest and the final revocation hearing, and a great distance exists between the place where the alleged violation occurred and the place where the revocation hearing will take place. (LADA at 22.) There is no legal citation given for that contention, and for good reason – it isn't true. It twists around something *Morrissey v. Brewer, supra,* 408 U.S. 471 said in mandating the two stages of probable cause hearing and final revocation hearing. In analyzing what process is due a parolee, *Morrissey* stated, "Before reaching the issue of whether due process applies to the parole system, it is important to recall the function of parole in the correctional process." (*Id.* at 477.) *Morrissey* goes on to say, "Implicit in the system's concern with parole violation is the notion that the parolee is entitled to retain his liberty as long as he substantially abides by the conditions of his parole. The first step in a revocation decision thus involves a wholly retrospective factual question whether the

parolee has in fact, acted in violation of one or more conditions of his parole. Only if it is determined that the parolee did violate the conditions does the second question arise: should the parolee be recommitted to prison, or should other steps be taken to protect society and improve chances of rehabilitation?" (*Id.* at 479-480.) The high court next considered the question of whether requirements of due process in general apply to parole revocations. (*Id.* at 481.) Then, deciding the nature of the process due for revocation of parole, and "bearing in mind that the interest of both State and parolee will be furthered by an effective but informal hearing," *Morrissey* saw "two important stages in the typical process of parole revocation." (*Id.* at 484-485.) The high court continued, "The first stage occurs when the parolee is arrested and detained, usually at the direction of his parole officer. The second occurs when parole is formally revoked. There is typically a substantial lag between the arrest and the eventual determination by the parole board whether parole should be revoked. Additionally it may be that the parolee is arrested at a place distant from the state institution, to which he may be returned before the final decision is made concerning revocation. Given these factors, due process would seem to require that some minimal inquiry may be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available. [Citation.] Such an inquiry should be seen as in the nature of a 'preliminary hearing' to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. [Citation.]" (*Id.* at 485.)

Thus, *Morrissey* does not say or mean that due process does not require a probable cause hearing unless two factors occur, as the District Attorney contends. What *Morrissey* actually says is there are many and complex considerations for holding that due process requires a probable cause hearing for parole revocations.

The District Attorney alleges that complying with a timetable would place a substantial burden on California counties, and in particular on Los Angeles County due to its large population of parolees. Burdens on the judicial system should be dealt with along with the other two factors in the procedural due process balancing under *Mathews v. Eldridge, supra,* 424 U.S. 319. The effects on the judicial system should not be considered in isolation.

Regarding the statistics provided by the District Attorney, it is important to note that the number of parolees in California seems to be decreasing. The following additional information is provided by the publications cited by the District Attorney, going beyond the statistics they cite. (LADA at 22-23.)

The Office of Research publication cited by the District Attorney says, "CDCR projects the active parolee population to decrease each of the next five fiscal years to 43,273 (4.8 percent) on June 30, 2016 and 42,499 (1.8 percent) on June 30, 2017. The Proposition 47-related increase in the parole population is temporary and has begun to wane. This effect on the parole population is expected to be substantially completed by 2017 with the anticipated discharge of most offenders on parole because of Proposition 47. After the first two years of the projection cycle, CDCR expects the parole population to

experience slight decreases of less than 1 percent each year, with the population reaching 42,072 on June 30, 2020 for a net five-year decrease of 7.5 percent (see Table 6)." (Office of Research, CDCR, Population Projections, Spring 2016, May 2016, p. 17.)

The Outcome Evaluation Report states, "Although a longer follow-up period is needed to examine the full impact of Realignment, preliminary findings show that decreases in parole violations and the three-year return-to-prison rate have not been offset by a spike in arrests and convictions." (Office of Research, CDCR, 2015 Outcome Evaluation Report, An Examination of Offenders Released in Fiscal Year 2011-11, August 2016, p. vii.) The report further states, "As Realignment is in effect for longer amounts of time during each offender's follow-up period and as offenders continue to be released post-Realignment, the number of returns for parole violations is expected to decrease with future cohorts studied by the CDCR. With the passage of Proposition 47 in November 2014, continued decreases in drug and property crimes are also expected in future cohorts examined by the CDCR." (*Id.*, p. ix.)

Regarding burdens on counties created by a preliminary probable cause hearing, the Judicial Council of California report cited by the District Attorney (LADA at 23) explains, "Because different types of cases require different amounts of judicial and staff resources, a weighted caseload approach is the standard method, nationwide, to estimate the workload and resource needs of the courts. Weighted caseload distinguishes between different categories of filings so that the resources required to process a felony case, for example, are recognized as being much greater than the resources required to process a traffic

infraction." That report further notes that the most complex types of cases include felony, personal injury/property damage/wrongful death, juvenile dependency, probation, and mental health. (Judicial Council of Cal., Court Statistics Report (2015), Preface.) Thus, the type of case must be considered in assessing a court's workload. A preliminary probable cause hearing in a parole revocation case should not be considered very complex comparatively. Compared to criminal hearings, it already has "relax[ed] evidentiary rules," something the District Attorney advocates. (LADA at 24.)

The District Attorney suggests, "To lessen the judicial strain, local courts should be able to enact a local rule that provides for a preliminary probable cause hearing upon offer of proof and timely request, but deeming the hearing waived upon failure to make the request." (LADA at 23.) This appears unworkable. How would a parolee – sitting in jail, unrepresented by counsel, with no court date – learn of the duty to make such a request? The scheme proposed by the District Attorney would create more questions than answers and pose unique and unnecessary challenges on appeal, such as whether a probable cause hearing was requested, whether the request was received, whether the request was timely, whether the request was presented in the proper form, and whether there was a sufficient offer of proof.

The District Attorney thus presents a complicated, inefficient scheme for handling alleged parole violations, which unreasonably (and unconstitutionally) places the burden on the parolee. Their plan would result in a greater judicial workload, not to mention more work for attorneys. Far simpler is to mandate a preliminary probable cause hearing. Such

a hearing would not be necessary if it is otherwise taken care of by a preliminary hearing concerning an independent felony. Based on what the District Attorney suggests, the preliminary probable cause hearing might also be subject to waiver by the parolee, similar to the way a preliminary hearing may be waived in a criminal case.

The District Attorney states, "Moreover, since the preliminary probable cause hearing, like a preliminary hearing in a criminal case, is simply to determine whether there is probable cause for revocation and not a determination of credibility or weighing of evidence, it is duplicative of the judicial officer's determination of probable cause held just 5 days before." (LADA at 23.) Appellant disagrees. *Morrissey* does require an evidentiary preliminary probable cause hearing for the determination of probable cause in a parole revocation case. Moreover, a full probable cause hearing is not duplicative of a judicial determination of probable cause. To the contrary, evidentiary rules and cross-examination increase the likelihood a parolee will not be wrongly held accountable and incarcerated for charged conduct against him. In the absence of a full hearing, a parolee is denied the right to "an opportunity to be heard at a meaningful time and in a meaningful manner." (See *Fuentes v. Shevin, supra,* 407 U.S. at 80.)

Further, a probable cause hearing requires an inquiry and that a summary be made and an evaluation take place to determine whether probable cause exists. (*Morrissey v. Brewer, supra,* 408 U.S. at 485-487.) Such a summary is best done at an evidentiary hearing. That work then need not be duplicated at the final revocation hearing; it would reduce later work, as a summary of the state's evidence will already be on record.

The District Attorney states, "In reality, the majority of parole violations are straightforward and are admitted to by the parolee without the necessity for a full hearing." (LADA at 23.) There is no citation to legal authority. It would seem that alleged parole violations run a gamut, and that a parolee might want to present affirmative defenses or other legitimate issues. Further, if most parole violations are in fact resolved by admission, then holding probable cause hearings would still serve a beneficial purpose, as the full presentation of adverse evidence may convince more parolees to make such an admission, thereby ensuring that only cases with genuinely triable issues will proceed to full revocation hearings.

Moreover, the District Attorney's analysis does not take into account the parole violation cases in which an independent felony is charged, and the probable cause hearing gets combined with the preliminary hearing in the criminal case. Nor does it take into account the fact that holding preliminary probable cause hearings would mean that numerous cases do not make it to the final revocation hearing – 16.2% in Orange County. (OCPD Amicus Brief– Exhibit B.) That could mean a lot of cases would get disposed of early in Los Angeles County. And perhaps, to turn the District Attorney's suggestion around, an alleged parole violator, with the advice of counsel, might choose to waive a preliminary probable cause hearing. Further, as the San Francisco Public Defender points out, having the 15-day rule has inspired earlier disposition of parole violation cases. (SFPD Amicus Brief p. 7.)

Two other large counties, San Francisco and Orange, have weighed in with this Court by filing amicus briefs, and they seem to be dealing successfully under *Williams v. Superior Court, supra,* 230 Cal.App.4th 636. If the problems cited by the Los Angeles District Attorney are due to the county's size and the concomitant number of parole violation cases, it would seem axiomatic that the smaller counties wouldn't have such problems. *Morrissey*'s probable cause hearing requirement is a fundamental rule that works. While Los Angeles may have problems due to its unique size, the District Attorney fails to offer a compelling justification for discarding this rule and for the entire state to re-organize its parole revocation framework around Los Angeles. The exception should not make the rule.

The limited nautre of the burden attributable to holding probable cause hearings is borne out by the experience of the two counties which have filed amicus curiae briefs in support of appellant. As noted in the amicus brief of the San Francisco Public Defender, having a 15-day limit is far from being a burden. Rather, according parolees due process has had a positive and efficient influence on the parolees, the district attorney, and the entire process. (SFPD Amicus Brief at 7.)

Orange County had a lot of alleged parole violators from January 1, 2016, to August 31, 2016, and has done well under *Williams v. Superior Court, supra,* 230 Cal.App.4th 636, too. According to their amicus brief, some parolees got days in custody even though no probable cause was found at the probable cause hearing; those are entered in red in Exhibit A. Forty three probable cause hearings were held out of 420 petitions resolved. Seven of

those cases ended in dismissal. It appears that a few petitions went right to final revocation hearing. There were many admissions at the arraignments, so a lot of cases were not on the table anyway for the question of whether due process requires a probable cause hearing. Other cases were disposed of earlier. (OCPD Amicus Brief.)

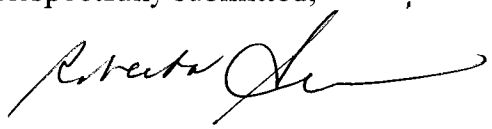
Thus, requiring an evidentiary probable cause hearing within 15 days of a parolee's arrest would not impose an undue burden on trial courts.

CONCLUSION

Appellant respectfully submits that for all of the reasons set forth above and in his Opening and Reply Briefs on the Merits, this Court should reject the arguments advanced by Respondent and their amicus and reverse the judgment of the Court of Appeal.

Dated: October 6, 2016

Respectfully submitted,



ROBERTA SIMON
Attorney for Appellant
Allen Dimen DeLeon

CERTIFICATE OF LENGTH

Re: *People v. Allen Dimen DeLeon* S230906

I, Roberta Simon, counsel for Allen Dimen DeLeon, certify pursuant to the California Rules of Court that the word count for this document is 5,674 words, excluding the tables, this certificate, and any attachment. This document was prepared in Microsoft Word, and this is the word count generated by the program for this document.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on October 6, 2016, at Oakland, California.

ROBERTA SIMON
Attorney for Appellant
Allen Dimen DeLeon

DECLARATION OF SERVICE

Re: *People v. Allen Dimen DeLeon* S230906

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is P. O. Box 10728, Oakland, California 94610. My electronic serving address is rsarasimon@hotmail.com. On October 7, 2016, I served a true copy of the enclosed Appellant's Consolidated Answer to Amicus Curiae Briefs on each of the following, by placing same in an envelope addressed respectively as follows:

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Each said envelope was then sealed and deposited in the United States Mail at Oakland, California, with the postage thereon fully prepaid.

On October 7, 2016, I transmitted a PDF version of this document by electronic mail to each of the following via TrueFiling:

First District Appellate Project
Attention: Jeremy Price, Esq.

Office of the Attorney General
For Respondent,
The People of California

Court of Appeal, First Appellate District (Div. 3)

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on October 7, 2016, at Oakland, California.

DECLARANT