

SUPREME COURT COPY

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

ALLEN DIMEN DELEON,

Defendant and Appellant.

**SUPREME COURT
FILED**

Case No. S230906

OCT 7 - 2016

Jorge Navarrete Clerk

Deputy

First Appellate District, Division Three, Case No. A140050
Solano County Superior Court, Case No. FCR302185
The Honorable Robert S. Bowers, Jr., Judge

**ANSWER TO AMICUS CURIAE BRIEFS IN SUPPORT OF
APPELLANT DELEON**

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INTRODUCTION

Appellant, Allen Dimen DeLeon, was found by the trial court to have violated his parole and was sentenced to 180 days in county jail for the violations. He appeals, claiming that the trial court's failure to hold a timely probable cause hearing consistent with *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*) violated his due process rights. Although not specifically required by *Morrissey* and its progeny, appellant argued in his Opening Brief on the Merits (OBM) and Reply Brief on the Merits (RBM) that due process requires a separate probable cause hearing to be conducted within 15 days of a parolee's arrest for an alleged parole violation under *Williams v. Superior Court* (2014) 230 Cal.App.4th 636 (*Williams*). As argued in respondent's Answer Brief on the Merits (ABM), due process only requires a probable cause hearing to be conducted as promptly as convenient after arrest and is flexible enough to allow for a timely unitary hearing procedure. In any event, appellant was not prejudiced by any constitutional violation because he received a timely, fair, and proper final revocation hearing before his parole was revoked.

The San Francisco Public Defender's Office (SFPD) filed an amicus curiae brief in support of appellant that echoes the arguments raised by appellant. The Orange County Public Defender's Office (OCPD) also filed an amicus curiae brief in support of appellant that presents statistics allegedly demonstrating how Orange County has successfully implemented the requirements of *Williams*. To the extent amici curiae's briefs may warrant additional discussion beyond what was addressed in the parties' briefs, it is discussed below.

ARGUMENT

I. DUE PROCESS REQUIRES AN INFORMAL PROBABLE CAUSE HEARING “AS PROMPTLY AS CONVENIENT” AFTER A PAROLEE’S ARREST FOR AN ALLEGED PAROLE VIOLATION

Amicus curiae SFPD mischaracterizes respondent’s position by stating that respondent urges this Court to find that an ex parte probable cause determination is sufficient to satisfy the due process requirements articulated in *Morrissey*, akin to the Court of Appeal’s holding in this case.¹ (SFPD 3.) Respondent disagrees with the Court of Appeal in that regard. As argued in the Answer Brief on the Merits, appellant was constitutionally entitled to an informal probable cause hearing before an independent officer, who makes a record of the hearing, held “as promptly as convenient after arrest,” with notice of the hearing and its purpose, and at which he could appear and speak on his own behalf, bring letters, documents or individuals to give relevant information and have an opportunity to question any individual who presents adverse information in support of revocation. (ABM 8-13; *Morrissey*, *supra*, 408 U.S. at pp. 485-487.)

In support of a 15-day deadline for a separate probable cause hearing, amicus curiae SFPD argues that “the sooner the hearing, the sooner the resolution, and the courts will save time and money, while promoting successful reintegration or [*sic*] parolees into society.” (SFPD 4.) A quicker probable cause hearing does not guarantee a quicker resolution because the timeline for the final revocation hearing is not affected. Respondent fails to see how the courts would save time and money if they were forced to hold two very similar hearings in every case when the same business could be conducted more efficiently in one timely unitary hearing.

¹ The Los Angeles District Attorney’s Office (LADA) has filed an amicus curiae brief in support of respondent that argues in favor of the Court of Appeal’s reasoning.

And, of course, due process only requires a probable cause hearing to be conducted “as promptly as convenient after arrest” after consideration of all the relevant interests involved (*Morrissey, supra*, 408 U.S. at pp. 481-485), not at the *soonest* possible time to best serve the parolee’s personal interests.

Amicus curiae SFPD focuses on the concern that a parolee’s life and efforts at rehabilitation will be disrupted by an unjustified parole hold. (SFPD 3-4.) As respondent pointed out in its Answer Brief on the Merits, there are several procedural safeguards in place to reduce the risk of erroneous deprivation of a parolee’s conditional liberty interest. (ABM 29-32.) In addition to those previously mentioned, Penal Code² section 1203.2, subdivision (a) also grants the court discretion to release the parolee from custody under any terms and conditions it deems appropriate while parole revocation proceedings are pending. That power was recently granted to trial courts in direct response to the *Williams* decision (Stats. 2015, ch. 61, § 1 (SB 517); Sen. Com. on Public Safety, Analysis of Sen. Bill No. 517 (2015-2016 Reg. Sess.) as introduced Feb. 26, 2015) and serves to further reduce the risk of an unjustified parole hold. All of these procedural safeguards are sufficient to protect a parolee’s due process rights without imposing an additional requirement that a separate probable cause hearing be held within 15 days of a parolee’s arrest.

II. MORRISSEY AND PENAL CODE SECTION 1203.2 PERMIT EACH COUNTY TO ADOPT ITS OWN PROCEDURES WITHIN THE BOUNDS OF REASONABLENESS ESTABLISHED BY DUE PROCESS

As set forth in respondent’s Answer Brief on the Merits, the informal and flexible procedures articulated in *Morrissey* permit each state to fashion

² All further statutory references are to the Penal Code unless otherwise specified.

a parole revocation process within *Morrissey*'s general framework. (ABM 13-22, 27, 33-34.) In turn, the Legislature has also provided for a certain degree of flexibility to be exercised by each county in its implementation of the parole revocation procedures articulated in sections 1203.2 and 3000.08. (ABM 17, 21-22, 27.) Amicus curiae SFPD argues that such flexibility and variability will lead to confusion, varied treatment, and additional legal challenges. (SFPD 5-6.) The argument merely amounts to a disagreement with the way the Legislature has chosen to implement *Morrissey*'s flexible due process requirements.

Although the Legislature intended to promote a uniform supervision revocation process when it amended section 1203.2 to apply to parole revocation proceedings (Stats. 2012, ch. 43, §§ 2, 30, 35 (SB 1023)), it did so without specifying time limits for a probable cause hearing or final revocation hearing. The Legislature simply adopted for parole revocation proceedings the already-existing and constitutionally-valid structure for probation revocation proceedings, which did not mandate rigid deadlines to be adhered to by every county. The Legislature could have chosen to model the new parole revocation process after the one articulated in section 3044, which included strict time limits for each stage of the process, but it chose not to do so. The Legislature also could have specifically provided for a separate probable cause hearing rather than allowing for a timely unitary hearing procedure, but it did not do that either. (See *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 56 [Legislature meant what it said and knew how to say it differently if it meant something else]; *Ramos v. Superior Court* (2007) 146 Cal.App.4th 719, 727 [“We presume the Legislature knew what it was saying and meant what it said.”].) The Legislature's choice signaled an intent to grant each county the flexibility to develop its own practices and procedures as it deems appropriate for its circumstances under the general framework of sections 1203.2 and

3000.08, just as the United States Supreme Court had done for the individual states in *Morrissey*. (*Morrissey, supra*, 408 U.S. at pp. 481, 490.)

The flexibility inherent in the parole revocation process will not lead to confusion, unacceptable variation in treatment, or further legal challenges as amicus curiae SFPD contends. Presumably those dangers would have already plagued California's probation revocation system for years, but respondent is unaware of, and neither appellant nor amici curiae complain of, any past or existing difficulties caused by its flexibility. Rather, the procedural flexibility provided for by *Morrissey* and the Legislature in this context must be accepted as an inherent characteristic of the orderly and efficient administration of justice across various courts with varying levels of judicial resources throughout the country and state.

III. THE LOCAL EXPERIENCES PRESENTED BY AMICI CURIAE ARE NOT PERSUASIVE

Amici curiae SFPD and OCPD each describe their respective county's experience under the parole revocation procedures required by *Williams*. (SFPD 6-7; OCPD Exhibits A & B.) Amicus curiae SFPD specifically explains that post-*Williams*, the court and the parties have sought to resolve cases quickly in furtherance of the goals of Realignment. (SFPD 7.) However, amici curiae have not presented any evidence to demonstrate either that their post-*Williams* experiences are meaningfully different from their pre-*Williams* experiences or that the *Williams* requirements are necessary to adequately protect a parolee's due process rights. The individual experiences of San Francisco and Orange counties alone, while they may be relevant in the grand scheme of the discussion, are not persuasive on the issue of whether due process requires a separate probable cause hearing within 15 days of a parolee's arrest.

The extensive statistics presented by amicus curiae OCPD do not appear to be very meaningful. They show that the vast majority of parole violation allegations in Orange County in 2016 have been admitted or found true, so any custody endured by those parolees was obviously justified. While some of the allegations have been dismissed, it is unclear from the data provided by OCPD if the dismissals were the result of a court finding a lack of probable cause to support the allegations or whether the allegations were dismissed for some other valid reason, such as part of a global resolution of numerous charges or allegations against the parolee. The data also does not indicate how many, if any, of the parolees listed were held in custody during the parole revocation process so as to implicate the due process protections required by *Morrissey* and its progeny. (See § 1203.2, subd. (a) [“whenever a supervised person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (b), the court may order the release of a supervised person from custody under any terms and conditions the court deems appropriate”].)

In any event, amici curiae present the experiences of just two counties. While San Francisco County and Orange County may have created workable parole revocation systems under *Williams* that suits each respective county, that will not necessarily be the case for all counties. For instance, Los Angeles County has a disproportionately large parole population and bears a substantial burden in implementing a suitable parole revocation process. (LADA 22-23.) Conversely, small counties with limited judgeships and resources available to devote to parole revocation matters may also have practical difficulties meeting the rigid *Williams* requirements. (LADA 23; ABM 33.) It is not surprising that Orange County has developed a workable system under *Williams*, considering that case was out of Orange County and the *Williams* court specifically

confronted the realities, practicalities, and capabilities of the Orange County Superior Court system in reaching its holdings and fashioning its remedies. (*Williams, supra*, 230 Cal.App.4th at pp. 644-646, 654, 657, 659-660, 662-664; see ABM 24-26.) And regardless whether the parole revocation process mandated by *Williams* is a favorable system or can be practically implemented by each county, it is simply not required by due process.

CONCLUSION

Accordingly, respondent respectfully requests this Court to affirm the judgment.

Dated: October 5, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER TO AMICUS CURIAE BRIEFS IN SUPPORT OF APPELLANT DELEON** uses a 13 point Times New Roman font and contains 1,810 words.

Dated: October 5, 2016

KAMALA D. HARRIS
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A handwritten signature in black ink, appearing to read "Darren K. Indermill". The signature is fluid and cursive, with a large, stylized initial "D".

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. DeLeon**

No.: **S230906**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 6, 2016, I served the attached **ANSWER TO AMICUS CURIAE BRIEFS IN SUPPORT OF APPELLANT DELEON** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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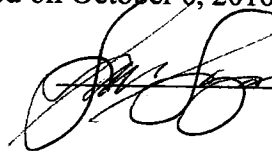
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 6, 2016, at Sacramento, California.

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Signature

