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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SHAWN JAMES ALLEN WOODALL,

Petitioner,

vs.

MATTHEW CATE, Secretary of the
California Department of Corrections and
Rehabilitation, et al.,

Respondents.

Civil No. 08cv1132-BTM (RBB)

ORDER:

**(1) ADOPTING IN PART THE
FINDINGS AND CONCLUSIONS OF
UNITED STATES MAGISTRATE
JUDGE;**

**(2) DENYING PETITION FOR A WRIT
OF HABEAS CORPUS; AND**

**(3) ISSUING A CERTIFICATE OF
APPEALABILITY**

Petitioner is a California prisoner proceeding pro se and in forma pauperis with a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner contends that his federal constitutional right to due process was violated when his probation was summarily revoked without a probable cause hearing (claim one), and when probation was subsequently reinstated and extended without a formal revocation hearing (claim two).

Presently before the Court is a Report and Recommendation (“R&R”) submitted by United States Magistrate Judge Ruben B. Brooks which recommends denying the Petition. (Doc. No. 15.) Petitioner has filed Objections to the R&R. (Doc. No. 16.)

The Court has reviewed the R&R and the Objections pursuant to 28 U.S.C. § 636(b)(1), which provides that: “A judge of the court shall make a de novo determination of those portions

1 of the report or specified proposed findings or recommendations to which objection is made.
2 A judge of the court may accept, reject, or modify, in whole or in part, the findings or
3 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). For the following
4 reasons, the Court **ADOPTS** in part the findings and conclusions of the Magistrate Judge,
5 **DENIES** the Petition, and **ISSUES** a Certificate of Appealability.

6 **1. Claim One**

7 Petitioner was on probation at the time he was arrested for a new offense, and he alleges
8 in claim one that the failure to hold a preliminary hearing to determine whether probable cause
9 existed that he had violated probation amounted to a denial of federal due process. (Pet. at 6.)
10 The state court denied this claim, finding that Petitioner’s due process rights under Morrissey
11 v. Brewer, 408 U.S. 471 (1972), and Gagnon v. Scarpelli, 411 U.S. 778 (1973), were not
12 violated because he was not arbitrarily deprived of his conditional liberty for any significant
13 period of time by the lack of a judicial determination that probable cause existed to show that
14 he had violated probation. (Lodgment No. 7, People v. Woodall, No. D050136, slip op. at 4-6
15 (Cal.App.Ct. Dec. 5, 2007).)

16 The Magistrate Judge found that Morrissey and Gagnon represented the clearly established
17 federal law applicable to claim one, and found that the appellate court’s adjudication of this
18 claim was neither contrary to nor involved an unreasonable application of that law, because
19 those cases provide that a preliminary probable cause hearing is not required where a probationer
20 has been detained pursuant to a new criminal charge. (R&R at 12-13.) Petitioner objects to that
21 finding, presenting arguments that were addressed in the R&R. (Objections at 2-5.)

22 The Court **ADOPTS** the findings and conclusions of the Magistrate Judge with respect
23 to claim one, and overrules Petitioner’s objections. Habeas relief is **DENIED** as to claim one
24 for the reasons set forth in the R&R.

25 **2. Claim Two.**

26 Petitioner alleges in claim two that his federal due process rights were violated because
27 his probation was revoked, reinstated and extended without a formal revocation hearing. (Pet.
28 at 7.) The appellate court recognized that Morrissey requires a formal revocation hearing, even

1 when a probationer has been convicted of a new crime, in order to require the prosecution to
2 prove that probation was violated and that the violation justifies revocation, as well as to give
3 the probationer an opportunity to explain or deny the circumstances surrounding the alleged
4 violation. (Lodgment No. 7, People v. Woodall, No. D050136, slip op. at 7.) The appellate
5 court denied claim two, however, on the basis that the record supported a finding that Petitioner
6 had waived his right to a hearing. (Id. at 7-9.) The appellate court noted that Petitioner had
7 admitted to committing the crimes upon which the revocation was based, and did not object to
8 the lack of a formal hearing. (Id. at 9.) The appellate court observed that Petitioner had a strong
9 incentive to waive a formal hearing because the trial judge indicated that he intended to reinstate
10 probation after it was revoked, which is what ultimately happened, rather than sentence
11 Petitioner to prison as a result of the revocation. (Id.) The appellate court also found that even
12 if there was error in failing to conduct a separate formal hearing, it was harmless beyond a
13 reasonable doubt because the result would have been the same if there had been a formal
14 revocation hearing. (Id.)

15 The Magistrate Judge found that although the appellate court was correct that Petitioner
16 did not object to the failure to hold a hearing, the record as a whole does not support a finding
17 of a waiver, as a mere failure to object does not constitute a knowing and intelligent waiver of
18 a fundamental right. (R&R at 18.) Petitioner agrees with the Magistrate Judge as to this finding
19 (Objections at 6-7) and Respondent has not objected. However, the record is not entirely clear
20 in this regard. At the beginning of Petitioner's change of plea hearing, defense counsel indicated
21 that the defense intended to waive the right to a probation violation hearing, and during the
22 change of plea hearing Petitioner responded affirmatively to the trial judge's inquiry whether he
23 understood that his probation would be revoked as a result of a guilty plea. (See Sealed
24 Reporter's Transcript [Doc. No. 11] vol. 7, Aug. 30, 2006 at 1201, 1204.) However, at the end
25 of the change of plea hearing, when Petitioner explicitly waived his right to a parole revocation
26 hearing, there appears to be some confusion in the record regarding whether Petitioner was
27 aware that his probation was still in effect. (Id. at 1205-06.) Petitioner did not object when his
28 probation was revoked, reinstated and continued. (Id., vol. 8, Sept. 28, 2006 at 1415.)

1 Nevertheless, there is no need to determine whether Petitioner validly waived his right
2 to a formal revocation hearing because, as the appellate court and Magistrate Judge correctly
3 found, any error was clearly harmless. Where, as here, the state court finds that an alleged
4 federal constitutional error is harmless beyond a reasonable doubt under the standard of
5 Chapman v. California, 386 U.S. 18 (1967), a federal habeas court determines whether the error
6 was harmless under the standard announced in Brecht v. Abrahamson, 507 U.S. 619 (1993).
7 Fry v. Pliler, 551 U.S. 112, ___, 127 S.Ct. 2321, 2328 (2007); O’Neal v. McAninch, 513 U.S.
8 432, 436 (1995) (in conducting a harmless error analysis under Brecht, relief is appropriate if
9 the Court is “in ‘grave doubt’ as to whether” the error was harmless). The Court adopts the
10 finding of the Magistrate Judge that the alleged error here is not structural error but is subject
11 to harmless error review (R&R at 22-23), and overrules Petitioner’s objections to that finding.

12 Any possible error in failing to provide Petitioner with a separate probation revocation
13 hearing was harmless. The trial judge provided a lengthy explanation as to why he intended to,
14 and ultimately did, find Petitioner suitable for probation rather than the five-year prison term
15 recommended by the probation officer or the three-year prison term as sought by the prosecutor.
16 (See Sealed Reporter’s Transcript vol. 7, Aug. 30, 2006 at 1202-03, 1206-07; id., vol. 8, Sept.
17 28, 2006 at 1407-10.) The appellate court’s finding that Petitioner “would have received the
18 same result if there had been a formal revocation hearing” is objectively reasonable for the
19 reasons discussed below. (Lodgment No. 7, People v. Woodall, No. D050136, slip op. at 9.)

20 Petitioner argues that a separate, formal revocation hearing would have provided him with
21 the opportunity to argue that his probation term should not have been extended. (Objections at
22 9-10.) In his declaration attached to the Objections he lists the evidence and the arguments he
23 would have presented at a formal revocation hearing, and “respectfully declines to speculate on
24 how the court would have viewed this evidence at a formal probation revocation hearing.”
25 (Objections at 10-14; Pet.’s Decl. at ¶¶ 5-11.) However, the trial judge took every one of these
26 items into consideration when deciding to revoke probation, with the sole exception of
27 Petitioner’s contention that his fellow employees would testify as to his character. (Compare
28 Pet.’s Decl. ¶¶ 5-11 with Sealed Reporter’s Tr. vol. 8, Sept. 28, 2006 at 1408-11 and Lodgment

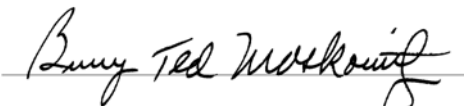
1 No. 1, Clerk’s Tr. [“CT”] at 17-24.) The trial judge, however, commented positively on
2 Petitioner’s character, stating that “out of a thousand-plus people I’ve seen in here, I really do
3 see the most potential in you.” (Sealed Reporter’s Tr. vol. 8 at 1410; *id.*, at 1407 (“I mean, if
4 you would strap a suit on him and put him at a table in a courtroom, he could easily be confused
5 with a relatively experienced attorney.”).) In addition, the trial judge informed Petitioner at the
6 change of plea hearing that he strongly suspected that Petitioner was not a suitable candidate for
7 incarceration, and instructed Petitioner to share any such information with the probation officer.
8 (*Id.*, vol. 7 at 1206-07.) The probation officer’s report and the documents submitted by
9 Petitioner to the trial court and probation officer include nearly all of the information Petitioner
10 now contends he would have provided at a formal revocation hearing. (Lodgment No. 1, Clerk’s
11 Tr. at 17-24, 28-29, 33-34, 37, 43-49.) Thus, the Court is not in “grave doubt” that had
12 Petitioner been provided with a formal probation revocation hearing the trial judge would have
13 altered in any way the decision to revoke, reinstate or continue Petitioner’s prior probation for
14 an additional three years. The appellate court’s determination that any error arising from a
15 failure to provide Petitioner with a formal probation revocation hearing was harmless was an
16 objectively reasonable application of clearly established federal law, and the Court **ADOPTS**
17 the Magistrate Judge’s finding to that extent. Habeas relief is **DENIED** as to claim two on that
18 basis.

19 **CONCLUSION AND ORDER**

20 The Court **ADOPTS** in part the findings and conclusions of the Magistrate Judge as set
21 forth above, and **DENIES** the Petition for a Writ of Habeas Corpus. The Court **ISSUES** a
22 Certificate of Appealability as to all claims presented in the Petition.

23 **IT IS SO ORDERED.**

24 DATED: March 23, 2009

25 
26 Honorable Barry Ted Moskowitz
27 United States District Judge
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