

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 23-0405

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FILED

AUG 08 2023

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

DONNIE NOLAN,

Petitioner,

v.

ORDER

TOM GREEN, Warden,  
Dawson County Correctional Facility,

Respondent.

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Representing himself, Donnie Nolan has filed a Petition for Writ of Habeas Corpus claiming he is illegally incarcerated because his parole should not have been revoked. Nolan was originally committed to the Montana State Prison in 2016 for ten years following his assault on a peace officer.

Nolan's parole revocation is premised upon two matters in the Municipal Court for the City of Great Falls. On October 19, 2022, the court set a preliminary hearing for violation of a protective order, 3rd offense. The court later dismissed and closed the matter on November 14, 2022 (No. CR-2022-0873) following the prosecution's motion to dismiss. In the other matter, (Docket No. TK-275-2022-0006719), the court accepted Nolan's not guilty plea to violation of a protective order, 2nd offense.

On January 24, 2023, the Board issued a parole revocation, pursuant to §§ 46-23-1023 and -1025, MCA. The Board set a date for Nolan's appearance, while noting his violations were for illegal drug use and for not remaining law abiding.

On March 13, 2023, the Municipal Court dismissed the remaining matter (Docket No. TK-275-2022-0006719) upon the prosecution's motion to dismiss.

Nolan argues he has a liberty interest in parole. He maintains that "[e]verything [said] to obtain a Protective Order was made up." He maintains that no evidence of bad

conduct was presented and that the City Prosecutor moved to dismiss the charges. Nolan argues that an offender must be convicted for a non-compliance violation, and not merely charged. He further contends that he was not timely brought before the Board of Pardons and Parole (Board) for his appearance and that the Board violated his due process rights when it did not apply the Montana Incentives and Intervention Guide (MIIG).

While Nolan cites to the correct statutes and case law, his arguments lack merit. Nolan does not have a liberty interest in parole because he committed his offense after 1989. “Although the Montana Legislature removed the mandatory language in 1989, we determined that inmates who committed offenses prior to the amendment continued to enjoy a federally[]protected liberty interest in parole.” *McDermott v. McDonald*, 2001 MT 89, ¶ 8, 305 Mont. 166, 169, 24 P.3d 200 (citing *Worden v. Montana Bd. of Pardons and Parole*, 1998 MT 168, ¶ 42, 289 Mont. 459, 962 P.2d 1157). Nolan committed his offense in 2016.

Further, even though the Municipal Court dismissed Nolan’s charges, the Board may consider the underlying conduct of the charged offenses. The charged new criminal offenses are considered non-compliance violations. “‘Compliance violation’ means a violation of the conditions of supervision that is not a new criminal offense[.]” Section 46-23-1001(3)(a), MCA. Nolan does not have to be convicted of the offenses for his underlying conduct to be considered by the Board. The Board “may consider evidence of offenses which were charged in dismissed counts.” *McDermott*, ¶ 20 (citations omitted). While the Municipal Court did not convict him for the offenses, the Board may consider the offenses and its evidence under its broad authority. *McDermott*, ¶ 20.

Moreover, Nolan incorrectly relies on § 46-23-1028, MCA, which applies only to compliance violations. Because Nolan was charged with committing new offenses in 2022, his Parole Officer was not required to apply the MIIG (§ 46-23-1001(3)(a), MCA), but was required to report the violations to the Board (§ 46-23-1025(1), MCA). The Board considered the Report of Violation, which listed the new offenses as a non-compliance violation, and did not improperly revoke Nolan’s parole.

Parole revocation involves certain due process requirements. The United States Supreme Court has held that following arrest, a parolee has a right to an administrative onsite hearing to determine if reasonable grounds for revocation exist. *Morrissey v. Brewer*, 408 U.S. 471, 485, 92 S. Ct. 2593, 2602, 33 L. Ed. 2d 484 (1972). The Montana parole revocation process is governed by statutes and administrative rules. Sections 46-23-1021, 46-23-1023, and 46-23-1025, MCA (2013); Admin R. M. 20.25.801 (2012).

We have stated many times that the Board has broad discretion in parole decisions. *McDermott*, ¶ 20. Montana's statutory scheme for supervision of parolees provides the process they are due in tandem with the Board's rules. See Admin. R. M. 20.25.801 (2012) (rules for the on-site hearing and revocation of parole). Nolan was not entitled to a preliminary hearing because he was charged in Municipal Court with the new offenses. "After the arrest of the parolee, an initial hearing must be held unless[,] . . . the parolee has been charged in any court with a violation of the law[.]" Section 46-23-1024(1)(b), MCA; Admin. R. M. 20.25.801(1) (2012). Nolan was given notice of the violations and the new charges in the charging documents. Section 46-23-1023(1), (2), MCA; Admin. R. M. 20.25.801(4) (2012). As a parolee, Nolan may be held without bail "for a final decision of the board." Admin. R. M. 20.25.801(8) (2012).

Because Nolan violated conditions of his parole, the Board had reason to revoke his grant of parole. Admin. R. M. 20.25.801(16)(e) (2012). "A condition on *parole* is a limited grant of freedom to someone who would otherwise be incarcerated." *McDermott*, ¶ 24 (emphasis in original). The Board would have imposed these conditions of no illegal drug use and laws and conduct at Nolan's initial parole hearing. Nolan received a copy of these conditions when he was granted parole. Section 46-23-1021(3), MCA. As a condition of Nolan's parole, he was to conduct himself as a good citizen. Nolan did not comply, and the Board revoked his parole on that basis.

We conclude Nolan is not entitled to release or to habeas corpus relief. Nolan's due process rights have not been violated. "Parole . . . is a discretionary grant of freedom from incarceration." *McDermott*, ¶ 24. Nolan violated his parole conditions, jeopardizing his "grant of freedom" by the Board.


For the foregoing reasons, we conclude that Nolan has not demonstrated illegal incarceration, pursuant to § 46-22-101(1), MCA. Therefore,


IT IS ORDERED that Nolan's Petition for Writ of Habeas Corpus is DENIED and DISMISSED.

The Clerk is directed to provide a copy of this Order to counsel of record and to Donnie Nolan personally.

DATED this 8<sup>th</sup> day of August, 2023.

  
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Justices