

## IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 24-0374

DONNIE NOLAN,

Petitioner,

v.

ORDER

WARDEN TOM GREEN,  
Dawson County Detention Facility,

Respondent.

Donnie Nolan has filed a Petition for Writ of Habeas Corpus and argues he is “being held illegally and . . . request[s] [to] be immediately released from secure placement and put back on parole in the community.” Nolan includes attachments, such as the October 18, 2022 Report of Violation and an August 28, 2023 Offender/Staff Request or kite. While Nolan includes a certificate of service with his Petition, he has not written any names for counsel or corresponding addresses.

Nolan claims that he should only be placed in a secure facility for nine months because his non-compliance violation—being charged with a crime—was dismissed. He points to various Montana statutes regarding supervision of parolees and probationers, and concludes that the recent decision from the Board of Pardons and Parole (Board) is in error because the Board should review his case prior to his discharge date of September 9, 2025, and he should only serve nine months in a secure facility, pursuant to § 46-23-1025(2)(b)(i), MCA. He again references the Montana Incentives and Intervention Guide (MIIG) for his claim that he should be put in the least restrictive placement. Section 46-23-1028, MCA.

Nolan advanced very similar arguments to a petition for habeas corpus relief he filed last year. *Nolan v. Green*, No. OP 23-0405, Order (Mont. Aug. 8, 2023) (*Nolan I*). We explained then how Nolan’s arguments and claims were misplaced. *See McDermott v.*

*McDonald*, 2001 MT 89, 305 Mont. 166, 24 P.3d 200.

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 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.

*Nolan I*, at 2.

We have addressed Nolan's claims before, and his revived arguments do not warrant habeas corpus relief. We conclude that the Board did not error in its decision, the MIIG does not apply to Nolan when he had a non-compliance violation, and he is not entitled to a nine-month placement in a secure facility. *Nolan I*. Nolan has not demonstrated illegal incarceration. Section 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 25<sup>th</sup> day of June, 2024.

  
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Chief Justice

Laurie McKen

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Angel Smith

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Dick M. Sandberg

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Pete Palmer

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Justices