

MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

People v. Campbell, 289 Mich App 533; 798 NW2d 514 (2010):

Issue: Should the Michigan Medical Marihuana Act (MMMA) be retroactively applied?

Holding: The court held that the MMMA should not be retroactively applied.

Defendant was charged with manufacture of marihuana, MCL 333.7401(2)(d)(iii), possession with intent to deliver marihuana, MCL 333.7401(2)(d)(iii), possession of a firearm during the commission of a felony (two counts), MCL 750.227b, and misdemeanor possession of marihuana, MCL 333.7403(2)(d).

The trial court granted Defendant's motion to dismiss after concluding that the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq., should be retroactively applied.

Plaintiff appealed as of right.

The charges against Defendant resulted from a search, pursuant to a warrant, of his home and vehicle on December 3, 2007. Nine marihuana plants, two bags of dried marihuana, and assorted drug paraphernalia were discovered in the search. A shotgun was also recovered from Defendant's home. Defendant stated to the police who executed the warrant that the marihuana was for medicinal use. While Defendant's criminal charges were pending, the MMMA was enacted and became effective on December 4, 2008.

Defendant moved to dismiss the charges against him based on the MMMA, which provides an affirmative defense for a criminal Defendant facing marihuana-related charges. MCL 333.26428(a). The trial court granted Defendant's motion, despite the prosecutor's assertion that Defendant was not entitled to the defense because his arrest occurred before the MMMA became effective.

The sole issue on appeal was whether the MMMA should be retroactively applied. A trial court's decision on a motion to dismiss is reviewed for an abuse of discretion.

Generally, statutes are presumed to operate prospectively unless the Legislature either expressly or impliedly indicates an intention to give the statute retroactive effect. *People v Conyer*, 281 Mich App 526, 529; 762 NW2d 198 (2008).

The Court rejected Defendant's argument that MCL 333.26428(a) was subject to retroactive application because there is an indication that the Legislature intended such. The sections of the MMMA that Defendant relies on to support this position, specifically MCL 333.26425 and MCL 333.26429, do not relate to whether the provision should be retroactively or prospectively applied.

Instead, those sections provide a timeline for actions to be taken by the Department of

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Community Health to implement the registered user provisions of the MMMA, as well as a self-executing alternative if the department fails to take the necessary actions within the specified timeline.

The case was reversed and remanded for reinstatement of the charges against Defendant.