

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON JOHN PETERS,

Defendant-Appellant.

UNPUBLISHED

January 21, 2010

No. 288219

Tuscola Circuit Court

LC No. 07-010552-FH

Before: Bandstra, P.J. and Sawyer and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by jury of possession of marijuana. MCL 333.7403(2)(d). Defendant was sentenced as a second habitual offender under MCL 333.7413(2) to serve 90 days in jail and 18 months of probation. We affirm.

I. Facts

Defendant chose to represent himself at trial. An advisory attorney was provided and was available and present at trial. On the morning of trial, defendant sought an adjournment because he had been informed the previous day that the alleged victim of the pending assault charge and another witness associated with that charge would not be testifying. Plaintiff indicated a willingness to drop the assault charge and proceed with trial on the possession of marijuana charge. Defendant objected, but the court agreed with plaintiff and the assault charge was dismissed. The trial court also denied defendant's request for an adjournment predicated on his representation that his defense to the possession charge was so interwoven with the assault charge that it would take hours to disentangle his prepared witness examinations.

II. Defendant's Rights to Self-Representation and to Present a Defense

Defendant argues that his right to self-representation and his right to present a defense were undercut when the trial court denied his request to adjourn the trial in order to give him more time to prepare his case. We review the court's denial of an adjournment for an abuse of discretion, *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003); MCR 2.503(D)(1), and the question of whether defendant was denied his right to present a defense, de novo, *People v Russell*, 471 Mich 182, 187; 684 NW2d 745 (2004); *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

Defendant cannot show that he had a legitimate reason to assert that his right to effective self-representation was undermined when he was required to proceed without an adjournment. The United States and Michigan Constitutions protect a defendant's right of self-representation at trial; however, this right is subject to the discretion of the trial court. *People v Willing*, 267 Mich App 208, 219; 704 NW2d 472 (2005). The record suggests that if defendant was unprepared to proceed following the dismissal of the assault charge, it was because he had been more focused during pretrial with meeting the assault charge than the possession charge. Moreover, defendant cannot show that he was unfairly prejudiced by the court's denial of his motion to adjourn. See *People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999). As recognized below, the assault and possession charges did not arise out of the same transaction, so there was nothing in the circumstances of the charges themselves that would have required a homogeneous defense. Indeed, the transcript shows that defendant cross-examined each of plaintiff's witnesses, often at length. Further, he presented six witnesses and argued his case both before and after proofs. Thus, his due process right to present a defense was not undermined. US Const, Am VI; Const 1963, art 1 § 20; *People v Hayes*, 421 Mich 271, 279; 264 NW2d 635 (1984).

Defendant asserts that the trial court made a mockery of his right to appear on his own defense by constantly badgered him for being unprepared. We have reviewed the exchanges with the court that allegedly evidence this badgering and have concluded that defendant's portrayal of the court's conduct is simply inaccurate. It is clear that the court's handling of the events of trial actually served to facilitate the proceedings and defendant's self-representation, so as to assure the fairness of the proceedings. Accordingly, the court did not abuse its discretion in denying the motion to adjourn.

III. Michigan Medical Marihuana Act

Defendant next argues that the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, should be retroactively applied to his case. The question of whether a statute should apply retroactively presents a question of statutory construction that we review *de novo*. *People v Conyers*, 281 Mich App 526, 528-529; 762 NW2d 198 (2008). The legislative initiative was submitted to the voters in November 2008, over one year after defendant's arrest and one month after he was sentenced.

Generally, a statute is presumed to operate prospectively unless the Legislature either expressly or impliedly indicates an intention to give the statute retroactive effect. *Id.* at 529. An exception to the general rule is recognized when a statute is remedial or procedural in nature. *Id.* "A statute is remedial if it is designed to correct an existing oversight in the law or redress an existing grievance, or if it operates in furtherance of an existing remedy and neither creates nor destroys existing rights." *Id.*, citing *Saylor v Kingsley Area Emergency Ambulance Service*, 238 Mich App 592, 598; 607 NW2d 112 (1999).

The MMMA was approved at the November 4, 2008 general election, and became effective December 4, 2008. MCL 333.26421. Generally, the act protects qualified patients, primary caregivers, physicians, and other persons from arrest, prosecution, or penalty in any manner for the use of marijuana for medical purposes. MCL 333.26424. An individual seeking protection under the MMMA must register with the state department of community health and obtain a registry identification card. MCL 333.26423(3). A qualified patient or caregiver is

permitted to possess no more than 2.5 ounces (roughly 71 grams) of usable marijuana, as well as an incidental amount of seeds, stalks, and unusable roots. MCL 333.26424(a), (b).

The MMMA clearly indicates that its effective date is December 4, 2008, and there is nothing included in the act to indicate that it was intended to be effective sooner than that date. Moreover, it is unlikely that the Legislature intended the act to be retroactive to a date prior to its effective date when the policies and procedures regarding identifying qualifying medical conditions and processing applications for registration cards were not even established. See MCL 333.26425(a), (b).

Further, contrary to the position advanced by defendant, there is nothing in the act to indicate that it was designed to invest trial courts with the discretion to determine whether to pursue criminal prosecution and conviction of those who use marijuana for medical purposes. A court may determine that a prosecution for marijuana should be dismissed if the provisions of MCL 333.26428 are satisfied, but the court is not vested with authority to make the initial determination on what prosecutions shall be pursued. In other words, the court's authority under the act is consistent with its existing authority under the penal laws.

The act is also not remedial or procedural in nature. A statute is remedial if it is designed to correct an existing oversight in the law or redress an existing grievance, or if it operates in furtherance of an existing remedy and neither creates nor destroys existing rights. *Conyers*, 281 Mich App at 529. Before the enactment of the MMMA, a defendant did not have the legal right to possess marijuana and there was no defense for such actions in Michigan.

Affirmed.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ Donald S. Owens