

Arizona ruling on return of seized pot stands

By Yvonne Wingett Sanchez The Republic | azcentral.com Tue Jul 9, 2013 5:31 PM

The Arizona Supreme Court has declined to consider a high-profile lawsuit over whether police can seize medical marijuana from patients since possession of marijuana still violates federal drug laws.

The court's Monday decision upholds an Arizona Court of Appeals ruling that required the Yuma County Sheriff's Office to give back marijuana officers seized from a California woman who legally possessed the drug under California law. Bill Kerekes, chief civil deputy for the Yuma County Attorney's Office, told *The Arizona Republic* on Tuesday his agency will petition the U.S. Supreme Court to hear the case.

The Arizona Court of Appeals in January ruled that the Yuma County Sheriff's Office must return marijuana to Valerie Okun, who had permission to use the drug for medical purposes.

Okun was stopped in 2011 at a Border Patrol checkpoint near Yuma. Authorities seized marijuana and other contraband from her car. She was cited for violating Arizona drug laws and the case was turned over to Yuma County officials. The charges were dismissed after she showed she was authorized to possess marijuana under California law.

The Arizona Medical Marijuana Act honors other states' medical-marijuana cards and allows users to possess up to 2 1/2 ounces of the drug.

After the charges were dropped, Okun asked sheriff's officials to return her marijuana, and the Superior Court granted her request. But the Yuma County sheriff argued that he could not return the pot because doing so may violate the federal Controlled Substances Act, which makes possession, sale or use of marijuana a crime.

The appellate court affirmed the Superior Court's ruling and required the sheriff to return the marijuana to Okun, saying it was not subject to forfeiture under state law.

"Moreover, the Sheriff is immune from prosecution under the federal law for acts taken in compliance with a court order," the three-judge panel wrote at the time.

The appellate court would not consider the state's argument that the state's medical-marijuana law is pre-empted by federal law.

Maricopa County Attorney Bill Montgomery, meanwhile, is appealing a Maricopa County Superior Court's ruling that federal drug laws do not pre-empt the state's medical marijuana law. The Court of Appeals is expected to hear arguments on that case this year.

Montgomery, who has made fighting the medical marijuana law a signature issue, said it was "obviously difficult to assess" why the state Supreme Court thought the appellate court's decision on the Okun case "was appropriate."

Voters in 2010 passed the medical-marijuana measure to allow people with certain debilitating medical conditions — including chronic pain, cancer and muscle spasms — to use marijuana. They must obtain a recommendation from a physician and register with the

state Department of Health Services, which oversees the program and issues identification cards to qualified patients and caregivers.

Patients are limited to purchasing 2 1/2 ounces every two weeks. About 37,600 people have permission to use medical marijuana in Arizona.