

STATE OF MICHIGAN
IN THE 40TH CIRCUIT COURT FOR THE COUNTY OF LAPEER

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

NATHAN ALAN OAKES,

Defendant.

Case No.: 19-013455-FH

Hon. Nick O. Holowka

OPINION

I. FACTS & PROCEDURAL HISTORY

In this case, Defendant Nathan Alan Oakes is charged in a felony information with delivery/manufacture of marijuana contrary to MCL 333.7401(2)(d)(i) (over 45 kg or over 200 plants) and possession of less than 25 grams of cocaine. The charges arise from evidence seized by law enforcement officers on or about September 24, 2017. The defendant asserts that the marijuana was cultivated for medical purposes, and he has asserted immunities and defenses under the Michigan Medical Marihuana Act.¹ Additionally, defendant contends that even if he is found guilty of unlawful manufacture of marijuana, the passage of the Michigan Regulation and Taxation of Marihuana Act (MRTMA),² which went into effect on December 6, 2018, controls the penalty that may be imposed for that offense and makes the crime a misdemeanor. Defendant has moved to dismiss the marijuana charge based on the change in the law. This court directed the parties to brief their positions on whether the MRTMA has any retroactive effect on defendant's case, and this court now determines that the MRTMA has no retroactive effect.

II. STANDARD OF REVIEW

In determining whether a statute should be applied retroactively or prospectively only, legislative intent governs. Statutes are presumed to operate prospectively unless the contrary intent is clearly manifested. *Frank W Lynch & Co v Flex Technologies*, 463 Mich 578, 583; 624 NW2d 180 (2001). When interpreting language that has been directly approved by the voters of this state, the court must ascertain and give effect to the intent of the electorate and give the language its "ordinary and plain meaning as would have been understood by the electorate." *People v Kolanek*, 491 Mich 382, 397; 817 NW2d 528 (2012). The plain language

¹ MCL 333.26421 et seq

² MCL 333.27951 et seq

is the most reliable evidence of the electors' intent. *Braska v Challenge Mfg Co*, 307 Mich App 340, 352; 861 NW2d 289 (2014). The court "must consider both the plain meaning of the critical words or phrases as well as their placement and purpose," and must avoid a construction that would render any language surplusage or nugatory. *People v Nicholson*, 297 Mich App 191, 197; __ NW2d __ (2012).

III. APPLICABLE LAW & ANALYSIS

Defendant asserts that the penalty provision of the MRTMA³ should be given retroactive effect such that, pursuant to part 4 of section 15, the defendant in this case, if found guilty of possessing or cultivating more than twice the amount of marijuana allowed under the MRTMA, but not guilty of conduct described in section 4 of the Act, may only be sentenced to a misdemeanor and shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence. This provision expressly applies to individuals whose activities are not authorized pursuant to the MRTMA. Because the conduct of the defendant in this case predated enactment of the MRTMA, his conduct clearly was not authorized by the Act. The only issue is whether section 15 may be applied at sentencing for conduct that occurred before the MRTMA went into effect. There is no express language in the statute clearly indicating an intention that any part of the Act should apply retroactively. Section 15 states that it applies to "[a] person who commits" certain acts. The use of the present tense verb "commits" and the conspicuous absence of any reference to past or prior conduct supports an interpretation that the provision is not intended to have retroactive effect.

Defendant asserts that the common-law rule is that when the legislature repeals a criminal statute or otherwise legalizes conduct that was formerly deemed criminal, this action requires dismissal of a pending criminal proceeding charging such conduct.⁴ However, the Michigan legislature has abrogated the common law by enactment of a general savings clause,⁵ which preserves offenses as being punishable despite a subsequent change in the law, unless a contrary intention is expressed in the amendment. This clause does not necessarily preserve the terms of punishment to be imposed "where an amendatory act mitigates the authorized terms of punishment but continues to proscribe the same conduct." *People v Schultz*, 435 Mich 517, 528-29; 460 NW2d 505 (1990); See also *People v Scarborough*, 189 Mich App 341, 344; 471 NW2d 567 (1991). However, when a new statute not only ameliorates the penalty for an offense but also redefines the conduct prohibited by law, the presumption of prospective-only application remains intact. *People v Doxey*, 263 Mich App 115, 120-21; 687 NW2d 360 (2004). The MRTMA clearly does more than reduce the penalty for possession or cultivation of marijuana. It creates new rights to use and possess marijuana within the limits set by the act, and it redefines the conduct that remains prohibited. Therefore, the statute presumably operates on a prospective basis only. Because there is no contrary intent clearly manifested by the statutory language, this court determines that the statute has no retroactive effect on sentencing or otherwise.

³ MCL 333.27965

⁴ See *Bell v Maryland*, 378 US 226, 230; 84 S Ct 1814; 12 L Ed 2d 822 (1964)

⁵ MCL 8.4a

IV. CONCLUSION

Based on the foregoing analysis and for the reasons stated, the defendant's motion to dismiss count one based on the enactment of the MRTMA is hereby considered and DENIED. The moving party shall prepare an order conforming to this opinion and submit it for entry pursuant to the court rules.

Date

10/1/21



Nick O. Holowka (P26095)
Chief Circuit Court Judge