

US Supreme Court turns down review of medical marijuana case

Contributed by Elizabeth Larson
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On Monday, the US Supreme Court decided not to hear an appeal of a landmark state court decision that held California's medical marijuana laws aren't preempted by federal statutes.

In a move hailed as a victory by advocates of medical marijuana, the high court turned down the city of Garden Grove's appeal in the case of Felix Kha.

"This should send a message to the federal government that it's time to establish a compassionate policy more consistent with the 13 states that have adopted medical marijuana laws," said Kris Hermes, a spokesman for Americans for Safe Access, the medical marijuana advocacy organization that represented the Kha in the case which the City of Garden Grove appealed to the U.S. Supreme Court.

In a 41-page decision the Fourth Appellate District handed down on Nov. 28, 2007, the court ruled that "it is not the job of the local police to enforce the federal drug laws."

The case — involving Kha, a medical marijuana patient from Garden Grove, California — was the result of seizure of medical marijuana by local police in June 2005, according to a statement by Americans for Safe Access.

Kha was pulled over by the Garden Grove Police Department on June 10, 2005, and cited for possession of marijuana, despite Kha showing the officers proper documentation, according to court documents.

The charge against Kha was subsequently dismissed, with the Superior Court of Orange County issuing an order to return Kha's 8 grams of medical marijuana seized by police. The police, backed by the city of Garden Grove, refused to return Kha's medicine and the city appealed.

In its decision from last year, the state court said that the federal Controlled Substance Act of 1970, enacted to combat recreational drug abuse and trafficking, did not intend to regulate the practice of medicine, "a task that falls within the traditional powers of the states."

The justices also noted that, while California's policy is at odds with that of the federal government, "the important point for purposes of this case is that state law does not interfere with the federal government's prerogative to criminalize marijuana."

Before the California Fourth District Court of Appeal issued its decision last year, California Attorney General Jerry Brown filed a "friend of the court" brief on behalf of Kha's right to possess his medicine. The justices noted they were convinced by Brown's arguments that local agencies are bound by state laws in approaching medical marijuana.

The California Supreme Court denied a case review in March, and Garden Grove went to the highest court in the land, which then turned the case down on Monday.

Medical marijuana advocates called the decision a huge victory in clarifying law enforcement's obligation to uphold state law — in this case, the Compassionate Use Act of 1996, which appeared on the ballot as Proposition 215. State voters approved the measure which allows for the use of medical marijuana for qualified patients.

Advocates asserted that better adherence to state medical marijuana laws by local police will result in fewer needless arrests and seizures. In turn, they believe it will allow for better implementation of medical marijuana laws not only in California, but in all states that have adopted such laws.

"It's now settled that state law enforcement officers cannot arrest medical marijuana patients or seize their medicine simply because they prefer the contrary federal law," said Joe Elford, chief counsel with Americans for Safe Access.

"Perhaps, in the future local government will think twice about expending significant time and resources to defy a law that is overwhelmingly supported by the people of our state," Elford added.

Local officials say they adhere to state guidelines

In Lake County, local law enforcement say they're in line with recently released state medical marijuana guidelines.

In August, California Attorney General Jerry Brown issued an 11-page medical marijuana guideline document to assist law enforcement and patients in clarifying the complexities around the issue.

"The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently," the guidelines state.

The document also points out that California's medical marijuana laws have been challenged unsuccessfully in court on the grounds that they are preempted by the federal Controlled Substances Act of 1970, which maintains that marijuana is a drug with "no currently accepted medical use," and so outlaws it.

Brown's guidelines explain that California did not legalize medical marijuana, "but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition."

As a result, Brown recommends that state and local law enforcement not arrest individuals or seize marijuana under the auspices of federal law when it's determined the cultivation, possession or transportation is permitted under California's medical marijuana laws.

Lakeport Police Chief Kevin Burke said his agency's enforcement policies are in keeping with the attorney general's suggestions, so he didn't anticipate any changes in operations.

Sheriff Rod Mitchell also said he didn't believe the guidelines would have an impact on his agency.

Clearlake Police Chief Allan McClain said the guidelines were helpful.

"The attorney general's report helps because it came out and gave specific limits on what officers on the street should be looking for," McClain told Lake County News. "They know what the limits are, what they can

have and what they can do.”

Burke also brought the issue to a meeting of the chiefs of all area law enforcement in September. He reported that none of those local leaders believed their policies conflicted with Brown's recommendations.

In an issue that crosses into city procedures, the city of Clearlake is not currently allowing new medical marijuana dispensaries to open.

The city's recently updated business license application has a box that asks, “Is any current or future activity of this business in violation of ANY federal, state or local laws, regulations or rules?” Any businesses violating any such laws, under city ordinance, won't be licensed, McClain said.

As a result of that, one recently dispensary application was denied, according to McClain. Another dispensary which allegedly did not state its plan to dispense medical marijuana is having its license pulled.

To see the attorney general's full guidelines, go to <http://ag.ca.gov/newsalerts/release.php?id=1601> and scroll down to “Related Attachments.”

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