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Court ruling will limit solo pot providers

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Tuesday, November 25, 2008

(11-24) 14:41 PST SAN FRANCISCO -- Someone who supplies marijuana to a patient who has a doctor's approval for it can be prosecuted for dealing drugs, the state Supreme Court ruled Monday in a narrow interpretation of California's medical marijuana law.

Advocates on both sides of the case agreed that the unanimous ruling will encourage Californians to obtain medical marijuana from patient cooperatives, which are authorized by a 2003 state law, rather than from an individual supplier.

"Ideally, it (the ruling) won't have a tremendous effect," said Joseph Elford, a lawyer for Americans for Safe Access, a pro-medical marijuana group. "Patients will now increasingly get their medication through collectives and cooperatives."

The 2003 law "provides an alternative outlet for patients," agreed Deputy Attorney General Michele Swanson, the state's lawyer. She said Monday's ruling applies only to a category of suppliers - those who are not the patient's caretaker or fellow cooperative member - whom the voters never intended to protect when they passed Proposition 215 in 1996.

But Lawrence Gibbs, attorney for the Santa Cruz County man who appealed his marijuana-dealing convictions, said the court "made it much, much more difficult for qualified patients to get their medical marijuana."

Although patients can turn to cooperatives or clubs, Gibbs said, the resulting centralization of cultivation and supply will make raids and prosecutions much easier for federal authorities, who are not bound by Prop. 215. President-elect Barack Obama said during the campaign that he supports a state's right to legalize the medical use of marijuana, but believes it should be subject to regulation by the U.S. Food and Drug Administration.

The ruling is the second time this year the state Supreme Court has limited the scope of Prop. 215, which allowed patients to grow and use marijuana with a doctor's recommendation.

In January, the court ruled that employers could fire medical marijuana patients who tested positive for the drug after using it away from the workplace. A bill to overturn that decision was approved by the state Legislature, but Gov. Arnold Schwarzenegger vetoed it.

Gibbs' client, Roger Mentch, was arrested in 2003 after a bank teller reported that the cash he had deposited over several months smelled strongly of marijuana.

Sheriff's deputies found nearly 200 marijuana plants growing in his home. He told authorities that

he had a doctor's recommendation to take the drug, and gave or sold the rest to five other patients.

Charged with cultivation and possession for sale, Mentch argued that he should be immune from prosecution because he was the patients' "primary caregiver."

Besides being their source of medical marijuana, Mentch said, he advised them about growing and using the drug and occasionally took some of them to doctor's appointments. He also said he did not make a profit.

The judge in Mentch's trial refused to let the jury consider whether he was a caregiver. Mentch was convicted of cultivation and possession for sale and given a suspended sentence and three years of probation.

An appeals court in San Jose overturned his convictions and said jurors should have been allowed to decide whether Mentch was the patients' caregiver. But the state's high court disagreed.

Marijuana suppliers can qualify as primary caregivers only if they were already taking care of a patient - providing medical aid or housing - when they began furnishing the drug, Justice Kathryn Mickle Werdegar said in Monday's ruling.

That might apply to a nurse or a relative tending to a seriously ill patient whose needs included marijuana, Werdegar said, but not to someone like Mentch, who she said tried to "establish an after-the-fact caregiving relationship" to protect himself from prosecution.

The court returned the case to the San Jose appellate panel, where Gibbs said he would try to show that Mentch was part of a patient cooperative authorized by the 2003 law.

The case is People vs. Mentch, S148204.

Read the ruling

The state Supreme Court's ruling on medical marijuana supplies may be read at:

links.sfgate.com/ZFLP.

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This article appeared on page **B - 1** of the San Francisco Chronicle