

From Ken Stecker:

In the attached February 11, 2021 published Michigan Court of Appeals case *People v Thue*, the defendant appealed by leave granted the circuit court's order denying defendant's application for leave to appeal the district court's denial of his motion to allow him to use medical marijuana while on probation.

The facts are that the defendant was involved in a road-rage incident for which he was charged with assault and battery, MCL 750.81. He ultimately pleaded guilty, and was sentenced to one year of probation. As a condition of probation defendant was not to use marijuana, including medical marijuana.

Defendant filed a motion to modify the terms of his probation to allow him to use medical marijuana. The district court denied defendant's motion to modify the terms of his probation. The Circuit Court denied leave to appeal, however, the Court of Appeals (COA) granted the defendant's leave.

On appeal to the COA, the defendant argued that revoking his probation upon the use of medical marijuana would constitute the imposition of a "penalty" in violation of MCL 333.26424(a)4 of the MMMA. Defendant also argued that MCL 333.26427(e) of the MMMA overrides the Michigan Probation Act, MCL 771.1 et seq., prohibiting the imposition of such a condition. The People argued the district court had the ability to place restrictions on a defendant's medication. The COA agreed with the defendant.

The COA noted "The MMMA provides that "[t]he medical use of marijuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act," MCL 333.26427(a), and "[a]ll other acts and parts of acts inconsistent with this act do not apply to the medical use of marijuana as provided for by this act." MCL 333.26427(e). The immunity provision of the MMMA, MCL 333.26424(a), provides in pertinent part that "[a] qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this act"

The COA held "That provisions of the Michigan Probation Act that allow a court to prohibit a probationer's MMMA-compliant use of marijuana impermissibly conflict with MCL 333.26427(a) and (e) of the MMMA and are unenforceable. Further, the revocation of probation upon the MMMA-compliant use of marijuana constitutes a "penalty" in violation of MCL 333.26424(a) of the MMMA."

Therefore, the COA concluded "The district court erred in prohibiting defendant from MMMA-compliant marijuana use as a term of his probation and defendant's motion to modify the terms of his probation to allow him to use medical marijuana should have been granted."

Reversed.