

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LEE POUNDERS,

Defendant-Appellant.

---

UNPUBLISHED

October 30, 2007

No. 272039

Lenawee Circuit Court

LC No. 04-011272-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a judgment of sentence imposing 60 to 240 months' imprisonment for his conviction of operating a laboratory for the manufacture of a controlled substance, MCL 333.7401c(2)(d). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In addition to his conviction for operating a drug lab, defendant was convicted of possession of marijuana, second offense, MCL 333.7403(2)(d); MCL 333.7413(2). At issue is whether possession of marijuana, second offense, constitutes a concurrent felony conviction for purposes of prior record variable (PRV) 7, MCL 777.57. The application of the statutory guidelines is reviewed de novo on appeal. *People v Cook*, 254 Mich App 635, 638; 658 NW2d 184 (2003). Statutory interpretation is a question of law that is also reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

PRV 7 considers concurrent felony convictions. The instructions direct the court to “[s]core the appropriate point value if the offender was convicted of multiple felony counts,” MCL 777.57(2)(a), but do not state what constitutes a “felony” and the definition of “felony” is not included in MCL 777.1, the definitions of terms used in the guidelines. The statutory guidelines are designated as Chapter XVII of the Code of Criminal Procedure, MCL 777.1 *et seq.* Chapter I of the Code contains definitions for words “[a]s used in this act[.]” MCL 761.1. Specifically, it defines the term “felony” to include (1) a violation of a penal law punishable upon conviction by death or imprisonment for more than one year, and (2) “an offense expressly designated by law to be a felony.” MCL 761.1(g). Possession of marijuana is expressly designated to be a misdemeanor under the Public Health Code. MCL 333.7403(2)(d). As a second offense, it retains its classification as a misdemeanor under § 7403 but is punishable by imprisonment for up to two years. MCL 333.7413(2).

The misdemeanor designation utilized by the Public Health Code is “irrelevant in determining statutorily mandated post-conviction procedures in the Code of Criminal Procedure” and, pursuant to MCL 761.1(g), a two-year misdemeanor constitutes a felony for purposes of the Code of Criminal Procedure. *People v Smith*, 423 Mich 427, 445; 378 NW2d 384 (1985). The statutory guidelines, including PRV 7, are part of the Code of Criminal Procedure. Therefore, possession of marijuana, second offense, constitutes a felony for purposes of PRV 7 because it is punishable by imprisonment for more than one year.

Defendant’s reliance upon *People v Wyrick*, 474 Mich 947; 707 NW2d 188 (2005), is misplaced. In that case, the question was whether possession of marijuana, second offense, constituted “another felony” for purposes of the consecutive sentencing provision of the Public Health Code, MCL 333.7401(3). Because possession of marijuana, second offense, retains its classification as a misdemeanor under the Public Health Code, it is that classification which is controlling for purposes of § 7401(3). However, as *Smith* makes clear, that classification has no bearing on whether the offense constitutes a felony for purposes of the Code of Criminal Procedure.

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder