

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RAMONA LEA KLINGER, *Appellant*.

No. 1 CA-CR 16-0892
FILED 9-28-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-156153-001
The Honorable Justin Beresky, Judge *Pro Tempore*

AFFIRMED AND REMANDED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Elizabeth B. N. Garcia
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Paul J. Prato
Counsel for Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Peter B. Swann joined.

C A T T A N I, Judge:

¶1 Ramona Klinger appeals her conviction of possession of marijuana and the resulting sentence. For reasons that follow, we affirm, but remand the cause for the superior court to address judgment and sentence on the related paraphernalia count.

FACTS AND PROCEDURAL BACKGROUND

¶2 In December 2015, while investigating an unrelated matter, an officer with the Mesa Police Department went to the apartment where Klinger was living. The officer discovered a small container of marijuana and a metal pipe containing burnt marijuana residue in Klinger’s room, and Klinger indicated that the drugs and drug paraphernalia belonged to her roommate, who was a medical marijuana user. Klinger showed the officer her own expired medical marijuana card, and specifically acknowledged that the card had expired over two-and-a-half months earlier. After the officer arrested her and read her *Miranda*¹ warnings, Klinger admitted that she had used the pipe to smoke marijuana, and the State charged her with misdemeanor possession of marijuana and possession of drug paraphernalia.

¶3 Klinger testified at a bench trial and described suffering from chronic back pain since a serious car accident in the 1990s. Klinger explained that she had first acquired a medical marijuana card in September 2013 and had renewed it a year later, but had not renewed the card when it expired in September 2015 because, although her medical condition remained the same, she lacked adequate funds to pay for renewal.

¶4 The superior court concluded that Klinger was not shielded from prosecution under the Arizona Medical Marijuana Act (“AMMA”), *see*

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

STATE v. KLINGER
Decision of the Court

Ariz. Rev. Stat. (“A.R.S.”) §§ 36-2801 to -2819,² and found her guilty of both offenses. The court sentenced her to 24 days in jail, time served, for possession of marijuana,³ and she timely appealed. We have jurisdiction over the conviction and sentence for possession of marijuana under A.R.S. § 13-4033(A).

DISCUSSION

¶5 Klinger argues that, in light of the AMMA, there was insufficient evidence to prove that her possession of marijuana was unlawful. We review the sufficiency of the evidence *de novo*, assessing “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. West*, 226 Ariz. 559, 562, ¶¶ 15–16 (2011) (citation omitted). We similarly review *de novo* any question of statutory construction. *Reed-Kaliher v. Hoggatt*, 237 Ariz. 119, 122, ¶ 6 (2015).

¶6 Klinger contends that her possession of marijuana was protected by the AMMA notwithstanding her expired registry identification card because she still had a debilitating medical condition, was still a qualifying patient, and was still engaged in medical use of marijuana. *See* A.R.S. § 36-2801(3)(b), (13), (9). She argues that the only thing that expired with her registry identification card was the presumption

² Absent material revisions after the relevant date, we cite a statute’s current version.

³ Although the superior court also found Klinger guilty of possession of drug paraphernalia, the court never pronounced or entered judgment and sentence for that offense. *See* Ariz. R. Crim. P. 26.2(b); Ariz. R. Crim. P. 26.3(a)(1), (b); Ariz. R. Crim. P. 26.16(a). Accordingly, we lack jurisdiction to consider the paraphernalia offense. *See* A.R.S. § 13-4033(A) (limiting a defendant’s right to appeal, as relevant here, to “only” from the final judgment of conviction and/or the sentence).

Thus, although we affirm the possession of marijuana conviction and sentence, we nevertheless remand the cause for the superior court to resolve the paraphernalia offense by rendering final judgment and sentence. *Cf.* Ariz. R. Crim. P. 26.16(a). Any request for or objection to delayed entry of judgment and sentence should be directed to the superior court in the first instance, and this court expresses no opinion on the matter. *See* Ariz. R. Crim. P. 26.3(a)(1), (b); *State v. Smith*, 112 Ariz. 208, 209 (1975). *But cf.* *State v. Rhodes*, 104 Ariz. 451, 453–55 (1969).

STATE v. KLINGER
Decision of the Court

of medical use under A.R.S. § 36-2811(A), but that as long as she was able to prove medical use, her possession of marijuana was lawful.

¶7 Marijuana possession and use remains proscribed in Arizona except in the limited circumstances protected under the AMMA. A.R.S. §§ 13-3405(A)(1), 36-2802(E); *State v. Sisco*, 239 Ariz. 532, 536, ¶ 17 (2016); *Reed-Kaliher*, 237 Ariz. at 122, ¶ 7. Immunity for a “registered qualifying patient” engaged in medical use of marijuana pursuant to the AMMA (and who possesses no more than the statutorily allowable amount) is one such protection. A.R.S. § 36-2811(B)(1). But “[p]ossession of any amount of marijuana by persons other than a registered qualifying patient, designated caregiver, or medical marijuana dispensary agent is still unlawful, and even those subject to [the] AMMA must strictly comply with its provisions to trigger its protections and immunities.” *Sisco*, 239 Ariz. at 536, ¶ 17.

¶8 Klinger’s argument that her possession of marijuana for medical purposes remained lawful fails because, after expiration of her registry identification card, she was no longer a *registered* qualifying patient entitled to protection under the AMMA. See A.R.S. § 36-2811(B). A qualifying patient effects “[r]egistration” under the AMMA by applying to the Department of Health Services for a registry identification card. A.R.S. § 36-2804.02(A). That registry identification card, and thus the qualifying patient’s registration, expires one year after issuance.⁴ A.R.S. § 36-2804.06(A). Without an active registration (evidenced by an unexpired registry identification card), even an otherwise qualifying individual has not “strictly compl[ied]” with the AMMA’s strictures as necessary to “trigger its protections and immunities.” See *Sisco*, 239 Ariz. at 536, ¶ 17.

¶9 Moreover, Klinger’s claim of “medical use” fails for the same reason. Even assuming she was using marijuana for her back pain, “medical use” is a defined term under the AMMA that encompasses use of marijuana only “to treat or alleviate a *registered* qualifying patient’s debilitating medical condition or symptoms.” A.R.S. § 36-2801(9) (emphasis added). Because Klinger was no longer a registered qualifying patient after expiration and nonrenewal of her registry identification card, she was not engaged in medical use of marijuana as contemplated by the AMMA. Accordingly, and in light of Klinger’s express acknowledgement

⁴ The qualifying patient may renew the card, but to do so must, among other things, provide a new written certification from a physician documenting that the person still suffers from a debilitating medical condition and is likely to benefit from using medical marijuana. Ariz. Admin. Code R9-17-204(A)(5)(d), (g), (k).

STATE v. KLINGER
Decision of the Court

that she had knowingly smoked the marijuana, sufficient evidence supported her conviction of possession of marijuana. *See* A.R.S. § 13-3405(A)(1).

CONCLUSION

¶10 Klinger's conviction and sentence for possession of marijuana are affirmed. The cause is remanded to the superior court for the court to determine whether to enter judgment and sentence for the paraphernalia offense.



AMY M. WOOD • Clerk of the Court
FILED: AA