

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MELANIE ANNE MOYES,
Petitioner.

No. 2 CA-CR 2014-0075-PR
Filed August 19, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Cochise County

No. CR201300231

The Honorable James L. Conlogue, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Edward G. Rheinheimer, Cochise County Attorney
By Brian M. McIntyre, Deputy County Attorney, Bisbee
Counsel for Respondent

Emily Danies, Tucson
Counsel for Petitioner

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Judge Vásquez concurred and Judge Espinosa specially concurred.

ECKERSTROM, Chief Judge:

¶1 Petitioner Melanie Moyes seeks review of the trial court's order denying her petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Because the record does not establish that Moyes is a registered qualifying patient under the Arizona Medical Marijuana Act (AMMA), we deny relief.

¶2 Pursuant to a plea agreement, Moyes was convicted of criminal trespass and possession of marijuana. In keeping with a stipulation in her plea agreement, the trial court suspended the imposition of sentence and placed Moyes on a three-year term of probation. The conditions of her probation included that she would "obey[] all laws" and would not "possess or use illegal drugs or controlled substances." In Moyes's presentence report, the probation officer stated Moyes had indicated that she "has a medical marijuana card, but did not provide it during the presentence interview." The probation officer asked that, if Moyes established she was a registered qualifying patient, the court "specifically authorize" Moyes to use marijuana in keeping with the AMMA or "deny her permission to do so."

¶3 At sentencing in June 2013, the trial court specified that Moyes was not to use marijuana, stating she could not use "medical marijuana" and indicating it would "never intentionally permit any probationer to use marijuana, medical or otherwise," as it was a violation of federal law. Moyes's probation officer issued additional

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conditions of probation in accordance with the court's ruling, stating Moyes was not to possess or use marijuana.

¶4 Moyes's probationary term also included a thirty-day "deferred incarceration" term, and after she was found to have used marijuana and methamphetamine in June and July 2013, she was arrested and ordered to serve fourteen days of that term. In October 2013 she was again found to have used methamphetamine and was ordered to serve five days of the term.

¶5 Moyes timely initiated a proceeding for post-conviction relief, and in her petition for post-conviction relief argued her privacy rights were violated and her sentence was illegal because "she has a probation condition which does not allow her medical treatment approved and codified by AMMA." She asserted, "The Court must allow [her] the right to treatment during probation" and asked that her probation conditions be amended to allow her to use marijuana in compliance with the AMMA. She also alleged that on October 25, 2013, she had wrongfully been subjected to a five-day incarceration sanction based on her use of marijuana in compliance with the AMMA.

¶6 The trial court summarily denied relief. It concluded Moyes's claim relating to her incarceration sanction was without merit because her October 2013 incarceration was based on use of methamphetamine, not marijuana. The court also "assume[d]" Moyes had obtained a registry identification card after receiving her physician's certification in August 2013. It determined, however, that Moyes was not entitled to use marijuana under the AMMA while on probation and denied relief on her petition.

¶7 On review, Moyes asserts the trial court abused its discretion in denying her petition. She maintains the court erred in determining she was not entitled to use marijuana in compliance with the AMMA while on probation and again asserts "sending [her] to jail as a deferred sanction because she has used marijuana is a violation of the AMMA." She states she "has a legally obtained Medical Marijuana Card," but does not include a copy or specify when that card was obtained.

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¶8 In A.R.S. § 36-2811(B), the AMMA provides a statutory immunity under which “a ‘registered qualifying patient . . . is not subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau’ for the patient’s ‘medical use of marijuana pursuant to’ the AMMA.” *Reed-Kaliher v. Hogatt*, No. 2 CA-SA 2014-0015, ¶ 8, 2014 WL 3702518 (Ariz. Ct. App. July 25, 2014). A qualifying patient is one who “has been diagnosed by a physician as having a debilitating medical condition,” but the statutory immunity above extends to qualifying patients who are “registered.” A.R.S. § 36-2801(13). A patient obtains a “registry identification card” by submitting to the Department of Health Services a physician’s certification dated within ninety days, an application fee, and an application requiring various information and statements. A.R.S. §§ 36-2804.02, 36-2801(4). The department then verifies the information and may approve or deny the application. A.R.S. §§ 36-2804.03; 36-2804.05. The statutory immunity applies to a registered qualifying patient who has completed this process. § 36-2811(B). The AMMA specifically does not protect use of marijuana “except as authorized under this chapter.” A.R.S. § 36-2802.

¶9 On the record before us, there is evidence Moyes has received a certification from a physician, but nothing establishes she has obtained a registry identification card. In her petition for post-conviction relief, as on review, she explained, without citation to evidence in the record, that she “had applied for a Medical Marijuana Card . . . before sentencing, but was told that she would go to jail if she got the card.” She stated she “waited until August 22, 2013, to finish her application for the medical examination pursuant to her obtaining a Medical Marijuana Card” and “received her Physician Certification” on that date. She later asserted she “has a legally obtained Medical Marijuana Card, and is subject to the” AMMA. But Moyes’s physician’s certification was the only AMMA document attached to her petition. In her reply to the state’s response to her petition for post-conviction relief, filed in January 2014, she also asserted she “has a legitimate medical marijuana card,” but did not include a copy.

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¶10 In its ruling on Moyes’s petition for post-conviction relief, the trial court “assume[d] that [Moyes] eventually obtained a registry identification card which allows her to engage in the medical use of marijuana.” But, as explained above, the AMMA only applies to registered qualifying patients. In the absence of evidence that Moyes had obtained a registry identification card, and in view of the fact that her physician certification was more than ninety days old when she filed her petition for post-conviction relief and when the court ruled, Moyes did not establish she was entitled to AMMA protection.

¶11 We will affirm the trial court’s ruling if it is correct for any reason. *See State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984). Because Moyes did not establish she was entitled to use marijuana lawfully under the AMMA, the condition of her probation prohibiting use of the drug was appropriate and the court was entitled to deny her relief on that ground. We therefore affirm its decision on that basis.

¶12 The petition for review is granted, but relief is denied.

ESPINOSA, Judge, specially concurring:

¶13 I concur in upholding the trial court’s order denying post-conviction relief but add this brief comment to clarify that I also would conclude the trial court was correct in denying relief based on Moyes’s having stipulated in her plea agreement to a term of probation, including conditions that barred marijuana use, consistent with my dissenting position in *Reed-Kaliher v. Hoggatt*, 691 Ariz. Adv. Rep. 42, ¶ 35 (Ct. App. July 25, 2014) (Espinosa, J., dissenting). However, because Moyes did not establish that she was entitled to use marijuana under the AMMA, such a conclusion is unnecessary to our result here.