STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 16, 2019
v	No. 342489 Livingston Circuit Court
DEREK STEPHEN SIEGEL, Defendant-Appellant.	LC No. 17-024329-FH

Before: SWARTZLE, P.J., and CAVANAGH and CAMERON, JJ.

SWARTZLE, P.J. (*concurring*).

I concur with the majority's decision affirming defendant's convictions and sentences. I write separately to address briefly the argument that defendant's conditions of bond conflicted with the Michigan Medical Marihuana Act (MMMA).

There is a case to be made that § 4 of the MMMA precludes a trial court from imposing, as a condition of bond, a blanket prohibition against marijuana use, even when the defendant possesses a valid medical-marijuana card. Section 4 provides 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* . . . for the medical use of marihuana in accordance with this act." MCL 333.26424(a) (emphasis added). Additionally, § 7 states that the "medical use of marihuana 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 [the MMMA] do not apply to the medical use of marihuana as provided for by this act," MCL 333.26427(e).

The MMMA does not define the term "penalty." Yet, our Supreme Court has held that the term "penalty" is "commonly understood to mean a punishment imposed or incurred for a violation of law or rule . . . something forfeited." *Ter Beek v Wyoming*, 495 Mich 1, 20; 846 NW2d 531 (2014) (quotation marks omitted). In *Ter Beek*, the plaintiff was a qualifying medical-marijuana patient who sought a declaratory judgment that the MMMA preempted an ordinance enacted by the defendant city. Violations of the ordinance were punishable by "civil sanctions, including, without limitation, fines, damages, expenses and costs." *Id*. at 6 (quotation

marks omitted). The Supreme Court held that the ordinance directly conflicted with the MMMA "by permitting what the MMMA expressly prohibits—the imposition of a penalty in any manner on a registered qualifying patient whose medical use of marijuana falls within the scope of § 4(a)'s immunity." *Id*. at 20 (quotation marks omitted). Accordingly, the *Ter Beek* Court held that the MMMA preempted the ordinance. *Id*. at 24-25.

In *People v Koon*, 494 Mich 1, 5, 8-9; 832 NW2d 724 (2013), our Supreme Court held that the MMMA supersedes MCL 257.625(8), which "prohibits a person from driving with any amount of marijuana in his or her system," so long as the registered qualifying patient is acting in accordance with the MMMA. Similarly, in *People v Latz*, 318 Mich App 380, 385; 898 NW2d 229 (2016), this Court held that "if another statute is inconsistent with the MMMA such that it punishes the proper use of medical marijuana, the MMMA controls, and the person properly using medical marijuana is immune from punishment." In *Latz*, this Court considered whether "an irreconcilable conflict" existed between MCL 750.474 and the MMMA. *Id*. at 385. Notably, this Court held that if "persons comply with the MMMA, then the MMMA grants those persons broad immunity from prosecution," *id*. at 386 (quotation marks omitted), and the "defendant, as an MMMA-compliant medical-marijuana patient, cannot be prosecuted for violating" MCL 750.474, *id*. at 387.

Defendant argues here that, although MCR 6.106(D) authorized the trial court to prohibit him from illicitly using any controlled substance, defendant was a registered medical-marijuana patient and his marijuana use was in accordance with the MMMA. Given this, defendant contends that his marijuana use was not illicit, and his use should not have constituted a violation of bond. Defendant further argues that because he did not violate the valid terms of his bond, he did not commit misconduct as defined in MCR 6.310(B)(3), and the trial court should have given him a chance to withdraw his plea when it decided to depart from the plea agreement, MCR 6.310(B)(2)(a) and (B)(3). As sketched out above, the language of MMMA §§ 4 and 7 and the holdings of *Ter Beek*, 495 Mich at 20, *Koon*, 494 Mich at 8-9, and *Latz*, 318 Mich App at 385, together suggest that the trial court should not have prohibited, as a condition of bond, any MMMA-compliant marijuana use by defendant.

And yet, this is not the case to make that case. First, defendant very likely waived appellate review of the issue. Waiver is "the intentional relinquishment or abandonment of a known right," and waiver extinguishes any error. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (cleaned up). Defendant signed the bond form that included the blanket marijuana prohibition. He did not object to signing the form and did not contest the condition, even though he apparently had a valid medical-marijuana card. When the parties discussed defendant's marijuana use, the trial court stated that, as part of the plea form, it told defendant "not to violate any of the laws of the State of Michigan," and defense counsel responded that defendant "will acknowledge that he smoked marijuana while on bond." Thus, the record makes clear that defendant did not object to or otherwise challenge the bond condition, he admitted to violating the condition, and, as a result, he has very likely waived the issue. Second, even if the issue is considered merely forfeited rather than waived, defendant cannot show that the trial court committed plain error affecting his substantial rights, as the majority aptly explains. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

For these reasons, I concur.

/s/ Brock A. Swartzle