IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 30076-5-III
Respondent,	)	
v.	)	UNPUBLISHED OPINION
GABRIEL SAGE BECKLIN,	)	
Appellant.	)	

Sweeney, J. — This appeal follows a conviction for manufacturing marijuana. The defendant claimed the right to grow and supply marijuana under the Washington State Medical Use of Marijuana Act, chapter 69.51A RCW, and wanted to assert the affirmative defense available under the act. The court noted that both the act and the prescription from his authorizing physician limited him to 15 plants and yet he had 116 plants and the court refused to let him present evidence on and assert the defense. We agree with that decision and affirm the conviction.

FACTS

Ferry County Sheriff's deputies obtained and executed a search warrant for Andre

Becklin's property. The affidavit in support of the warrant referred to aerial observations by a deputy of marijuana plants in two greenhouses on the property. Deputies went to the Becklin property. There Gabriel Becklin, Andre Becklin's son, handed over documents purporting to be marijuana prescriptions for himself, Marlin Martinez, and Tyson Wheeler. The deputies searched the house and surrounding property and found 116 marijuana plants as well as dried harvested marijuana.

The State charged Gabriel Becklin with manufacturing marijuana and the unlawful use of a building for drug purposes. The parties later agreed to dismiss the charge of unlawful use of a building for drug purposes without prejudice.

Mr. Becklin moved for leave to assert the affirmative defense permitted by the Medical Use of Marijuana Act (ch. 69.51A RCW). He argued that he was both a qualified patient and a designated provider under the act. Mr. Becklin filed a number of documents in support of his motion, including a copy of his medical marijuana authorization signed by Dr. Mohammad Said. It authorized the use of "no more than 15 Plants" for a 60-day supply and a copy of the medical authorization for Mr. Wheeler, signed by Dr. Ralph Capone, N.D., which also limited the 60-day supply to 15 plants. Mr. Becklin also submitted an undated handwritten paper, stating, "I Tyson Wheeler give Gabe Becklin the permission to be caretaker for me." Clerk's Papers (CP) at 47. The State moved to exclude evidence of and preclude any defense based on the Medical Use of Marijuana Act because Mr. Becklin had

failed to show that he was a qualified designated provider or a patient.

The court concluded that Mr. Becklin had failed to establish that he was a qualifying patient under the act because his authorization was limited to 15 plants and, of course, he had more than that. The court also concluded that he had failed to establish that he was a "designated provider" for Mr. Wheeler and Mr. Martinez because the supporting documents were invalid and the act prohibits a person from supplying more than one patient at a time. The court then denied Mr. Becklin's motion to present the affirmative defense and granted the State's motion.

Mr. Becklin moved for reconsideration and argued that he should be allowed to explain why he possessed more than 15 marijuana plants. He declared that he needed more than 15 plants to treat his condition because he had difficulties growing marijuana. And he argued that the authorizing physician does not have the authority to prescribe the amount of marijuana a patient may consume. The prosecutor responded that courts should defer to the authorizing physician's recommendation regarding the amount of marijuana a qualifying patient may possess. The court concluded that the legislature did not intend to allow qualifying patients to possess amounts of marijuana in excess of their doctor's recommendations and the court denied Mr. Becklin's motions for reconsideration.

The court then found Mr. Becklin guilty of manufacturing marijuana on stipulated

facts.

DISCUSSION

Mr. Becklin contends that he should have been allowed to assert the defense and argues that his medical needs could not be met with the limited supply of medical marijuana authorized by the current act. He notes that recent revisions to the act would have allowed such a showing and since the revisions are remedial, he should have been permitted to argue his theory. The State responds that the recent revisions to the Medical Use of Marijuana Act are not retroactive. It argues that Mr. Becklin's offer of proof in support of his motion to assert the defense clearly shows that he did not meet the requirements of the statute (former RCW 69.51A.040(1) (2007)) and therefore, the court correctly denied his request to argue the affirmative defense available under the Medical Use of Marijuana Act.

Preliminarily we reject Mr. Becklin's contention that the 2011 amendments to the act apply here. We agree with Division Two of this court's answer to that question. *State v. Brown*, 166 Wn. App. 99, 104, 269 P.3d 359 (2012) ("We conclude that the 2011 amendments do not apply retroactively.").

The essential facts here are undisputed. So whether those facts were sufficient to support the defense afforded by the Medical Use of Marijuana Act is a question of law that we will review de novo. *State v. Shepherd*, 110 Wn. App. 544, 550, 41 P.3d 1235 (2002). And it was Mr. Becklin's burden to

offer sufficient admissible evidence to justify giving the instruction. *State v. Ginn*, 128 Wn. App. 872, 879, 117 P.3d 1155 (2005).

Under the Medical Use of Marijuana Act, "[q]ualifying patients with terminal or debilitating illnesses who, in the judgment of their health care professionals, may benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana." Former RCW 69.51A.005 (2010). Mr. Becklin had to show that

> (a) he met the criteria for status as a qualifying patient,
>
> (b) he possessed no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and
>
> (c) he had to present valid documentation to any law enforcement official who questioned the patient regarding his medical use of marijuana.

Former RCW 69.51A.040(3) (2007).

The court found that Mr. Becklin met the criteria of a "qualifying patient." Dr. Said was a licensed physician and Mr. Becklin suffered from an unspecified debilitating or terminal condition. The court also found that Mr. Becklin presented valid documentation to law enforcement during the search. The problem the court noted was that "the uncontroverted 116 plants discovered would not qualify for the medical marijuana affirmative defense for Mr. Becklin as a 'qualifying patient' alone since his authorization was for only up to fifteen (15) plants." CP at 60.

Again, the act prohibits a qualifying

patient from possessing marijuana in excess of that necessary for his or her medical needs. RCW 69.51A.040(3)(b). WAC 246-75-010(3)(a) defines a presumptive 60-day medical marijuana supply, stating: "A qualifying patient and a designated provider may possess a total of no more than twenty-four ounces of useable marijuana, and no more than fifteen plants."

Mr. Becklin argues that he should have been allowed to argue that he needs more than 15 plants. He points out that he submitted declarations stating that he needs more than 15 plants because he eats, rather than smokes, his marijuana, and that some of his plants die before harvested. That argument is not helpful. His physician only authorized the amount permitted by statute:

> As this patient's "60 Day Supply" as stipulated by RCW 69.51A.040(3)(b) and WAC 246-75-010, the Qualifying Patient can reasonably expect to have in [his] Possession and [n]eed a total of no more than 24 Ounces of "Useable Marijuana" and no more than 15 Plants.

CP at 45.

And it is that authorization that is controlling. *Shepherd* is instructive here. There, the defendant was convicted for possession of 35 to 46 marijuana plants because the defendant failed to document the amount of marijuana needed for a 60-day supply. We noted that the only showing by the defendant in support of the necessary amount was a city council report that referenced a scientific method of calculating an actual usable

amount. This court found the city council report insufficient, noting the doctor's authorizing statement failed to identify how much marijuana the patient needed. *Shepherd*, 110 Wn. App. at 552. Without that statement, we concluded, there was no way to decide whether the amount the defendant grew for the patient's benefit fell within the 60-day limitation. *Id.* Mr. Becklin's authorization does not support growing 116 marijuana plants.

Nor does Mr. Becklin address the court's conclusion that he failed to establish an affirmative defense as a "designated provider" to Mr. Wheeler or Mr. Martinez under the act. CP at 62. We need not then address this portion of the trial court's ruling. RAP 10.3(a)(6); *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998) (passing treatment of argument is insufficient to merit judicial consideration). And it alone would support the conviction here.

We affirm the conviction for manufacturing marijuana.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

_____
Sweeney, J.

WE CONCUR:

_____
Korsmo, C.J.

_____
Siddoway, J.