

Medical Marijuana in the Jail:

People v. Harris (Dec. 21, 2006) 145 Cal.App.4th 1456

Rule: P.C. § 4573.5 does not prohibit the bringing of medical marijuana, lawfully possessed per H&S §§ 11362.5 and 11362.7, into a county jail.

Facts: Defendant, upon being convicted of a misdemeanor, was sentenced to a term of local custody and ordered to surrender himself to the Lake County Jail. Prior to beginning his jail time, defendant sent a letter to the Lake County Sheriff advising him that he was a "qualified patient," pursuant to H&S § 11362.7(f) and (h), and a lifetime user of marijuana for chronic pain as defined in H&S § 11362.7(f). He announced

that he would be showing up for his jail time with 72 wafers containing cannabis extract and three ounces of cannabis extract in olive oil. The jail facility's chief custody officer responded to defendant in writing that if he attempted "to bring onto or possess any drug on facility grounds" he would be charged with a felony. Defendant ignored the warning and brought his "medications" to the jail. And, as promised, defendant was charged with the felony offense of bringing unauthorized "drugs, other than controlled substances" (*Italics added*) into a county correctional facility, per P.C. § 4573.5. Following a court trial, where it was stipulated that defendant met the medicinal marijuana requirements as described in H&S §§ 11362.5 and 11372.7, allowing him to use marijuana, defendant was convicted. He appealed, arguing that because marijuana is not an "other than a "controlled substance," section 4573.5 does not prohibit marijuana in a county jail.

Held: The First District Court of Appeal (Div. 2) agreed with defendant and reversed his conviction. Section 4573.5 prohibits the possession of drugs "other than controlled substances" in various correctional facilities including a county jail. The prosecution's argument was that because medical marijuana may be legally possessed when the requirements of H&S §§ 11362.5 and 11362.7 are met (as was stipulated to by the parties in this case), it cannot be a controlled substance prohibited by Division 10 of the Health and Safety Code. Marijuana, therefore, must be an "other than (a) controlled substance" as described in section 4573.5. For instance, P.C. § 4573 prohibits in a jail the possession of "any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code." It has previously been ruled that possession in a jail of a drug for which the defendant has a lawful prescription is not a violation of section 4573 because, being legal to possess, it is not prohibited by Division 10 of the Health and Safety Code. (See *People v. Fenton* (1993) 20 Cal.App.4th 965.) The same result should hold true for medical marijuana legally possessed by a "qualified patient" under H&S §§ 11362.5 and 11372.7. The Court of Appeal didn't buy this argument, noting that marijuana, as a Schedule I drug, is in fact a "controlled substance" as defined in H&S § 11007. Contrary to the language of section 4573, section 4573.5 does not contain any requirement that to be illegal it must be "as prohibited by Division 10 of the Health and Safety Code." It merely prohibits the bringing of drugs "other than a controlled substance"

into a jail. Specifically declining to decide whether defendant could have been prosecuted under P.C. § 4573, the Court simply ruled that because section 4573.5 only prohibits "other than a controlled substance," and with marijuana being a controlled substance, defendant is not guilty of this offense.

Note: But reading People v. Fenton, it would appear to my simple mind that because defendant legally possessed the marijuana under H&S §§ 11362.5 and 11362.7, and with section 4573 only prohibiting the possession in a jail of those controlled substances "prohibited by Division 10 of the Health and Safety Code," then there is no way to charge people who come under the medical marijuana protections (i.e., medical marijuana not being prohibited by Division 10 of the Health and Safety Code) with anything when they bring their medical marijuana into a jail. If I have interpreted this court's reasoning correctly, then its time for some new legislation.

This was a portion of a bigger legal update from:

San Diego District Attorney  
D.A. LIAISON LEGAL UPDATE

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Vol. 12 March 29, 2007 No. 4 Subscribers: 2,257  
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