

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
May 31, 2011

v

HOWARD EARL CARROLL,

Defendant-Appellee.

No. 297541
Wayne Circuit Court
LC No. 08-013798-FH

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

PER CURIAM.

The prosecution appeals by right the order dismissing two charges against defendant: possession with intent to deliver less than five kilograms or fewer than 20 plants of marihuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. We reverse.

The order of dismissal was premised on the trial court’s conclusion that the Michigan Medical Marihuana Act (MMA), Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, applies retroactively. The court therefore permitted defendant to benefit from the act, which became effective on December 4, 2008, although defendant was arrested and charged in September 2008. The court concluded that defendant—who offered evidence that he was a qualified patient under the act, MCL 333.26424(a)—was entitled to dismissal because marihuana use in compliance with the act is “a defense to any prosecution involving marihuana,” MCL 333.26428(a).

But this Court held in *People v Campbell*, ___ Mich App ___; ___ NW2d ___ (Docket No. 291345, issued July 13, 2010), that the MMA applies prospectively from its effective date only because it “creates a new right in that it provides an affirmative defense to a criminal defendant facing prosecution for crimes related to the use of marihuana that did not exist prior to the enactment of the MMA.” The *Campbell* Court’s decision is binding precedent and is consistent with prior Michigan jurisprudence regarding statutory construction. “The general rule . . . is that a new or amended statute applies prospectively unless the Legislature has expressly or impliedly indicated its intention to give it retrospective effect.” *People v Russo*, 439 Mich 584,

594; 487 NW2d 698 (1992); see also *People v Conyer*, 281 Mich App 526, 529; 762 NW2d 198 (2008). Consequently, we must reverse the trial court.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro