

**ENDORSED-FILED**

**MAR 09 1998**

**CITY OF MENDOCINO COUNTY  
COORDINATED COURTS**

**MENDOCINO COUNTY COORDINATED COURTS  
STATE OF CALIFORNIA**

**THE PEOPLE OF THE STATE OF CALIFORNIA**

**Plaintiff and Petitioner**

**No: 97-77843**

**vs.**

**MUNICIPAL COURT, COUNTY OF MENDOCINO  
CHRISTOPHER JOSEPH BROWN,**

**Respondent**

**ORDER  
DISCHARGING  
EMERGENCY  
PETITION FOR  
WRIT OF  
MANDATE**

**CHRISTOPHER JOSEPH BROWN**

**Real Party in Interest**

**This matter came on for hearing this date, Mr. Michael D. O'Reilly appearing for the petitioner, Ms. Hannah Nelson appearing for respondent.**

**The facts of this case as presented by the parties and appearing from the court file reveals that the Mendocino County District Attorney filed a felony complaint charging respondent and a co-defendant (who is now deceased) with three counts of various felony charges involving the cultivation and possession of marijuana.**

**On August 1, 1997, the prosecution moved for dismissal of the complaint which was granted pursuant to Penal Code Section 1385. As represented by the parties before this court, the dismissal was sought by the prosecution upon presentation to the District Attorney of a letter from respondent's physician stating that because this patient experiences adverse side effects from normal medication, the use of**

marijuana as an analgesic for his back pain is appropriate and recommended. (Exhibit D attached to the petition).

On December 18, 1997, the magistrate ordered return of the marijuana to respondent, and the Attorney General filed in this court an emergency petition for issuance of a writ of mandate to set aside the magistrate's order.

Essentially, the State's argument is that possession of marijuana for any purpose is still a crime under federal law, and that there is no authority to order the Sheriff to "dispense" this contraband to the public. Further, the prosecution argues that the amount involved (300 grams and 45 growing plants) does not meet the test of being an amount reasonably related to the defendant's medical needs under the standard articulated in People vs. Trippet, 56 CA4th, 1532.

To the extent that Health and Safety Code Section 11362.5 is in conflict with federal law is not an issue in this proceeding. Federal authorities historically cede prosecution of small amounts of marijuana to the states. Furthermore, that issue is not addressed in the Trippet decision which implicitly recognizes the validity of Health and Safety Code Section 11362.5. This Court is not inclined to render a judgment on this petition that is inconsistent with the decisions of California courts.


As to the issue of whether the amount involved here is reasonably related to respondent's medical needs, it is represented that the 45 growing marijuana plants are now probably dead. The remaining three hundred grams of harvested marijuana constitutes less than a pound.

The State has made the decision not to prosecute the respondent in recognition that this amount (and the growing plants) may constitute a defense under Health and Safety Code Section 11362.5, which is implicitly a recognition that the amount is reasonably related to this respondent's medical needs under the standard articulated in Trippet. No evidence has been presented to this court rebutting that determination, and the amount involved is not so much as would on its face compel a different conclusion. Therefore, this court finds that three hundred grams is reasonably related to respondent's medical needs.

The argument that the magistrate's order forces the Sheriff to illegally dispense marijuana is not well taken. If the State declines to prosecute on the grounds that respondent legally possessed the marijuana for medical reasons, then the marijuana is no longer "contraband" as contemplated by state law.

Based thereon, this Court finds that the magistrate's order did not exceed his jurisdiction, and the Petition for Emergency Writ of Mandate is discharged.

DATE: 3/5/98

  
Henry K. Nelson, Judge