

## RECENT COURT OF APPEALS DECISION MAY PROVE SIGNIFICANT FOR THOSE WITH RECORD OF POT POSSESSION

by Lindsay N. Hutchinson

According to the state's second-highest court, some people who were previously convicted of criminal offenses related to possessing marijuana may be entitled to have those convictions overturned thanks to recent changes in the laws concerning recreational pot use. In a decision announced on March 13, 2014, the Colorado Court of Appeals ruled that Amendment 64, which decriminalized possession of an ounce or less of marijuana for personal use, applies retroactively to those cases that were on appeal or subject to other post-conviction relief when the amendment took effect. While interpretations of the court's ruling vary, it is clear that not every person who has previously been convicted of possessing marijuana will be eligible for relief under this rule. The court's decision appears to be limited to specific convictions that were sustained within a certain amount of time before December 10, 2012 – the effective date of the Amendment. Whether a conviction is eligible to be overturned is a question that should be evaluated on a case-by-case basis by a qualified attorney.

This significant decision by the three-judge panel of the Court of Appeals arose out of the case of *People v. Brandi J. Russell*, 2014 COA 21. In that case, Ms. Russell was charged for crimes that occurred in March 2010. She was convicted at trial of possession of marijuana concentrate and possession of less than one ounce of marijuana, and was sentenced in August 2011. Thereafter, she filed a timely appeal of her convictions, and the appeal remained pending concurrent with the enactment of the amendment. The court noted that while the language of the amendment is silent concerning prospective or retroactive application, the amendment constituted a "significant change in the law," which, pursuant to C.R.S. §18-1-410(1)(f)(I), requires its benefits to be applied retroactively. Because Ms. Russell's charges were decriminalized by Amendment 64, and provided that her appeal was pending on December 10, 2012, she was entitled to relief under the amendment and her convictions were ordered to be overturned.

One of the questions circulating about the court's ruling is whether retroactive application of the amendment extends to cases that were eligible for appeal, but for which no appeal was ever filed. Some opponents of the decision question the legality of the court's ruling because the language of the amendment does not explicitly authorize application to old cases. The breadth and scope of the law's application will continue to be debated until further judicial review, which may happen in the Colorado Supreme Court should the current decision be appealed.<sup>1</sup>

This case has important and extremely beneficial outcomes for those to whom it applies. If you or someone you know has a conviction that you think may be covered by this ruling, contact the attorneys at Foster Graham Milstein & Calisher. We are well-equipped to advise whether your conviction falls within the scope of this decision, and, if so, how to make sure you receive the benefits of its application. Call us today at (303) 333-9810 to schedule a free initial consultation.

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<sup>1</sup> On March 13, 2014, Attorney General John Suthers told the Denver Post that his office would likely appeal the Court of Appeals' decision. Steven K. Paulsen, *Colorado Court: Some Pot Cases Can Be Overturned*, Denver Post, March 13, 2014.