

Pot arrest in Eldorado Forest may be wiped clean from suspect's record

By Denny Walsh, Sacramento Bee

Kelly J. Michael was an enemy of the United States in the war on marijuana for more than two years.

He was found in April 2010 by a U.S. Forest Service sleuth in the Eldorado National Forest with less than one-eighth of an ounce of pot in a jar. Nearby was a grinder to make it suitable for rolling a joint.

He and a friend were charged, although charges were dropped for the friend because of a doctor's recommendation.

But Michael had no such recommendation.

The ensuing battle royal over about a joint's worth of marijuana began and ended in a Sacramento courtroom, but not before it found its way to the highest court in the West, the 9th U.S. Circuit Court of Appeals.

Prosecutors' relentless efforts to hang a federal drug conviction on Michael were finally squashed last week when U.S. Magistrate Judge Kendall J. Newman dismissed the case.

An Arden Park resident, now 29, Michael didn't contest the charges, pleading guilty to misdemeanor possession of a controlled substance and ready to face sentencing in November 2010. First Assistant Federal Defender Linda Harter asked for a fine and unsupervised probation.

She pointed out that her client had undergone extensive treatment, including psychological counseling, for hyperhidrosis, a medical condition that causes excessive

sweating, stress and depression. Michael found that marijuana eases his anxiety and, after the arrest, he got a recommendation to use pot from one of his doctors, as California requires.

Harter noted that Michael had recently completed a nine-month educational program on substance abuse as a result of a 2009 drunken driving violation, the only thing on his rap sheet.

But the judge handed down a sentence of a year's supervised probation, including frequent drug and alcohol testing and mental health treatment, plus a \$1,000 fine.

That sentence "is a little bit much considering what happens down the street," Harter told Newman, referring to a bill just signed by then-Gov. Arnold Schwarzenegger that made possession of less than 28.5 grams of marijuana – Michael had 2.4 grams – a civil infraction in California, punishable by a \$100 fine.

Newman, however, said "I am not going to turn a blind eye and say please go forward and smoke marijuana, just don't do it on federal property." He also said "there may very well yet be ways to help this gentleman cope with his issues" other than pot.

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