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Judge rules man can keep smoking medical marijuana

■ **Allen Helmers will stay out of jail while he uses pot to battle pain.**

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WATERLOO

A Waterloo man who claims he uses marijuana as medicine will not go to jail, and will not be tested for the drug during the remainder of his probation.

Allen Douglas Helmers, 49, has been contesting an alleged probation violation after testing positive for marijuana in August and October 1995.

After a protracted court battle, District Judge Jon Fister ruled Monday, "the defendant's probation should not be adversely affected for want of a medical prescription which he could legally obtain in Iowa but for the threat of federal prosecution faced by his physician."

Fister said today the ruling does not reflect a view that marijuana should be legalized for medicinal use, but points out discrepancies in federal and state definitions.

Helmers' supervised probation will continue, but the judge relieved the Department of Corrections from enforcing the stipulation banning his use of marijuana.

"The judge did the right thing in not revoking his probation," Helmers' attorney Tom Frerichs said. "Does it open some eyes? I hope so."

Assistant County Attorney Tony Janney said he was disappointed with Fister's decision.

"Through all my research ... I have found no credible evidence saying (marijuana) has any medical effect," he said. "It will remain to be seen if that will have any long-term effect ... or if this will be a unique case."

Helmers has been diagnosed with fibromyalgia, a mysterious condition whose sufferers claim to be in almost constant pain. He also has back problems from a 1994 accident in which his motorcycle was struck by a drunken driver.

He is allergic to drugs like morphine that are commonly prescribed to treat chronic pain and contends the only thing that alleviates his condition is smoking marijuana.

Prosecutors contended there is no medical evidence marijuana has medicinal value and that Helmers, who admitted using marijuana for at least 30 years, needs to be treated for his addiction.

Helmers has been on probation since 1995 for possession of marijuana with intent to deliver and failure to have an Iowa drug tax stamp.

Prosecutors recommended putting Helmers in the violators program — a semi-lockdown-style residential center in Newton — because the facility has a staff member who also has fibromyalgia and is familiar with steps for treating the condition.

Janney recommended Monday Helmers be sent to inpatient treatment at Covenant Medical Center.

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Allen Helmers
Diagnosed with fibromyalgia

POT

Judge says decision reflects discrepancies in laws

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Fister added in his ruling if lawmakers and state health officials were to reclassify marijuana as a stronger drug, he wouldn't have a problem

finding a violation.

Fister noted the case will remain open until the conflict between the state and federal law pertaining to accepted medical uses of marijuana is resolved, or the state produces a detailed plan in which Helmers' pain can be managed without marijuana.

The ruling also stipulates Helmers will remain under supervised probation, which could be revoked if he violates other drug laws.