

**From:** diana lejins <dianalejins@yahoo.com>  
**Sent:** Wednesday, April 29, 2015 4:53 PM  
**To:** Carolyn Hill; Poonam Davis  
**Cc:** Diana Lejins  
**Subject:** 4th District Court of Appeal - Baniani Decision

**Please post and distribute to MMj Task Force**

## **Ruling could help marijuana collectives**

Aug. 22, 2014

[BY ERIC HARTLEY](#) / STAFF WRITER

SANTA ANA – Members of medical marijuana collectives could have an easier time fighting criminal charges under a state appeals court ruling Friday.

The court threw out a felony conviction of the founder of a Newport Beach collective, saying he was barred from presenting a full defense at trial.

Because Herbal Run Marijuana Collective took money in exchange for marijuana, the trial judge would not let Borzou Baniani's lawyer put on a defense under the state's Medical Marijuana Program Act.

Baniani's lawyer, Scott C. Thomas, said Friday's ruling should help future defendants argue their collectives operated legally because they weren't making a profit.

"I think it's going to put more of a burden on prosecutors," Thomas said. The Attorney General's Office, which represented the state on appeal, didn't respond to requests for comment.

A jury convicted Baniani in 2013 of possession for sale of marijuana, and a judge sentenced him to three years' probation. But the appeals court reversed the conviction and sent the case back for a possible new trial.

A panel of the Court of Appeal for the Fourth District rejected the prosecution's argument that people can contribute money to a collective only before any marijuana is planted.

**"It would be cruel for those whose need for medical marijuana is the most dire to require that they devote their limited strength and efforts to the actual cultivation of the marijuana and then wait months for it to grow so they can use it, or to require that they make their monetary contribution and then wait months for the marijuana to be planted, grown and harvested before they may lawfully be provided medical marijuana," Justice Eileen Moore wrote. "Moreover, for some the cultivation and processing would not be completed until it was too late to provide any relief."**

Baniani said he started the collective after his uncle died of pancreatic cancer, and he consulted with a lawyer who wrote the bylaws and articles of incorporation for Herbal Run. Some members of the collective donated time or expertise in exchange for marijuana, court records show. But others couldn't or didn't donate time and simply donated money.

In March 2010, an undercover Newport Beach police detective, Elijah Hayward, used a fake name and driver's license to get a doctor's recommendation for medical marijuana. Hayward then visited the Herbal Run collective on Campus Drive near John Wayne Airport, where he signed up as a member and paid \$60 for an eighth of an ounce of marijuana. Baniani wasn't there when the detective bought marijuana.

Weeks later, a different officer went to the office after someone called to report the smell of marijuana. Baniani was there that day and showed police the marijuana that was stored there for the collective.

Because the collective took cash for drugs, the prosecutor argued it wasn't protected by the Medical Marijuana Program Act, which exempts people growing marijuana in collectives from criminal prosecution as long as they don't make a profit. Orange County Superior Court Judge David Hoffer agreed.

But the appeals court said it should be up to a jury to decide whether the facts show a collective is a true nonprofit or a shield for a profit-making enterprise.

"Now at least ... people have a fighting chance," Thomas said.

**Contact the writer:** 949-229-5950 or [ehartley@ocregister.com](mailto:ehartley@ocregister.com)