

[Cite as *State v. Helton*, 2004-Ohio-4231.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83960

STATE OF OHIO	:	
	:	
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
DAVID HELTON	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT
OF DECISION:

August 12, 2004

CHARACTER OF PROCEEDING:

Criminal appeal from
Common Pleas Court
Case No. CR-439889

JUDGMENT:

REVERSED AND REMANDED

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellant:

WILLIAM D. MASON
Cuyahoga County Prosecutor
THERESE M. MCKENNA, Assistant
1200 Ontario Street
Cleveland, Ohio 44113

For Defendant-Appellee:

JOHN J. GILL
1370 Ontario Street
1220 Standard Building
Cleveland, Ohio 44113

ANTHONY O. CALABRESE, JR., J.

{¶1} Plaintiff-appellant State of Ohio (“state”) appeals from the decision of the Cuyahoga County Court of Common Pleas that granted defendant-appellee David Helton’s (“Helton”) motion to dismiss. For the reasons stated below, we reverse and remand.

I.

{¶2} In 1996, Helton pled guilty to two counts of aggravated robbery and was sentenced to a term of five to twenty-five years incarceration. In March 2002, he was paroled. On November 5, 2002, Helton failed to report to his parole officer and was subsequently indicted on one count of escape, in violation of R.C. 2921.34. On November 19, 2003, Helton filed a motion to dismiss the indictment, relying on this court’s decision in *State v. Thompson*, Cuyahoga App. No. 78919, 2002-Ohio-6478.¹ On December 5, 2003, the trial court granted Helton’s motion.

{¶3} It is from this decision that the state advances one assignment of error for our review.

II.

{¶4} In its sole assignment of error, the state argues that “the trial court erred in dismissing the escape charge.” We agree.

{¶5} The trial court granted Helton’s motion to dismiss on the authority of this court’s decision in *Thompson*, supra. Because of conflicting authority on this issue, both within the state of Ohio and our own district, we elected to stay the state’s appeal in this

¹In *Thompson*, this court held that a parolee could not be prosecuted for escape if the underlying crime for which the defendant was placed on parole occurred prior to July 1, 1996.

case pending the Ohio Supreme Court's review of *Thompson*. On June 23, 2004, the Ohio Supreme Court held that "a parolee who fails to report to his parole officer after March 17, 1998, may be prosecuted for escape under R.C. 2921.34 regardless of when his or her underlying offense was committed."² As stated above, Helton failed to report to his parole officer on November 19, 2003.

{¶6} In light of the *Thompson* decision and the facts of this case, the trial court erred in dismissing the escape charge against Helton. The state's assignment of error is sustained.³

Judgment reversed
and remanded.

This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee costs herein.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate

²*State v. Thompson*, 102 Ohio St.3d 287, 2004-Ohio-2946.

³Helton's ex post facto argument is without merit. The date of his underlying offense is of no consequence. As his failure to report occurred after March 17, 1998, he may be prosecuted for escape under R.C. 2921.34. Id.

pursuant to Rule 27 of the Rules of Appellate Procedure.

ANTHONY O. CALABRESE, JR.
JUDGE

ANN DYKE, P.J., and

DIANE KARPINSKI, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).