

[Cite as *State v. Grier*, 2004-Ohio-4624.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 83236

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellant	:	
	:	AND
vs.	:	
	:	OPINION
ROBERT GRIER	:	
	:	
Defendant-Appellee	:	
	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	<u>SEPTEMBER 2, 2004</u>
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-424660
	:	
JUDGMENT	:	REVERSED AND REMANDED.
	:	
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellant:	WILLIAM D. MASON, ESQ. Cuyahoga County Prosecutor
	BY: MATTHEW T. NORMAN, ESQ. Assistant Prosecuting Attorney
	The Justice Center, 9th Floor
	1200 Ontario Street
	Cleveland, Ohio 44113

For defendant-appellee:	RAMIE A. RESNICK, ESQ. 46 Chagrin Plaza Suite 215 Cleveland, Ohio 44022
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FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, State of Ohio, appeals the grant of a motion to dismiss handed down by the Cuyahoga County Court of Common Pleas, Criminal Division, relative to appellee's prosecution under R.C. 2921.34, Escape. For the reasons that follow, we reverse the decision of the trial court and remand the case for further proceedings.

{¶2} On June 2, 2002, appellee, Robert Grier, was indicted on one count of escape, in violation of R.C. 2921.34. He filed a motion to dismiss the indictment on May 28, 2003, which was granted by the trial court on authority of *State v. Thompson*, Cuyahoga App. No. 79819, 2002-Ohio-6478, overruled, 102 Ohio St.3d 287. Appellant filed a timely notice of appeal on July 29, 2003 and assigns one assignment of error:

{¶3} "THE TRIAL COURT ERRED IN DISMISSING THE ESCAPE CHARGE AGAINST THE DEFENDANT."

{¶4} Prior to July 1, 1996, R.C. 2967.15 specifically exempted parole violators from new charges of escape for their failure to comply with the terms of their parole. Upon the enactment of Senate Bill 2 ("S.B. 2"), R.C. 2921.01(E) was amended to make parolees liable for new charges of escape upon violations of certain terms of their parole. A conflict between statutes was thus created because R.C. 2967.15 was not amended with respect to the exemption of parolees until March 17, 1998. Even with that amendment, a conflict remained with regard to parolees who were convicted of crimes prior to July 1, 1996, but committed acts

constituting escape while on parole prior to the amendment of R.C. 2967.15 in 1998. This dichotomy was addressed in *State v. Conyers* (1999), 87 Ohio St.3d 246, which held that no parolees could be convicted of escape for such acts committed during the period of conflicting statutes (July 1, 1996 through March 17, 1998).

{¶5} But what of acts of escape committed subsequent to the 1998 amendment by parolees who had been convicted for acts committed prior to July 1, 1996? This court considered that situation in *State v. Thompson*, supra. In *Thompson*, we held that the applicable statutes contained conflicting requirements and were so ambiguous as to require them to be construed against the state.

{¶6} This court also considered a similar case, *State v. Carpenter*, Cuyahoga App. No. 82470, 2002-Ohio-4198. There, the trial court had dismissed the state's case where the defendant had been on parole for crimes committed on July 1, 1996, prior to the enactment of S.B. 2, and was subsequently indicted for escape in 2002 as a parole violator. The trial court's dismissal was upheld in *Carpenter*, which followed the *Thompson* decision regarding the status of parole violators. See, also, *State v. Tuttle*, Cuyahoga App. No. 80775, 2003-Ohio-419.

{¶7} However, the Ohio Supreme Court recently reversed our decision in *Thompson* and determined in *State v. Thompson*, 102 Ohio St.3d 287, 290 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 crime was committed.

{¶8} Therefore, we find the appellant's sole assignment of error well taken and reverse this case to the trial court for proceedings consistent with this opinion.

Judgment reversed.

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 common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR.
PRESIDING JUDGE

TIMOTHY E. McMONAGLE, J., AND

ANTHONY O. CALABRESE, JR., 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).