

[Cite as *State v. Evans*, 2004-Ohio-6634.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84283

STATE OF OHIO

Plaintiff-Appellant :

vs.

EDDIE EVANS

Defendant-Appellee :

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JOURNAL ENTRY

and

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

December 9, 2004

CHARACTER OF PROCEEDING:

Criminal appeal from
Common Pleas Court
Case No. CR-444567

JUDGMENT:

REVERSED AND REMANDED

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellant:

WILLIAM D. MASON
Cuyahoga County Prosecutor
RALPH KOLASINSKI, Assistant
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For Defendant-Appellee:

ROBERT L. TOBIK

Cuyahoga County Public Defender
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1200 West Third Street
Cleveland, Ohio 44113-1569

COLLEEN CONWAY COONEY, J.:

{¶ 1} The State of Ohio appeals the trial court’s dismissal of the escape charge against defendant-appellee, Eddie Evans (“Evans”). Finding merit to the appeal, we reverse and remand for further proceedings.

{¶ 2} In November 2003, Evans was charged with one count of escape for failing to report to his parole officer. The trial court granted Evans’ motion to dismiss the indictment under the purview of this court’s holding in *State v. Thompson*, Cuyahoga App. No. 79819, 2002-Ohio-6478. The State appeals, raising one assignment of error, in which it argues that the trial court erred in dismissing the escape charge.

{¶ 3} The Ohio Supreme Court recently reversed this court’s decision in *Thompson* and determined 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 the underlying crime was committed. *State v. Thompson*, 102 Ohio St.3d 287, 290, 2004-Ohio-2946, 809 N.E.2d 1134, 1137. We, therefore, find that Evans, by failing to report to his parole officer in May 2003, may be prosecuted for escape. See, also, *State v. Grier*, Cuyahoga App. No. 83236, 2004-Ohio-4624; *State v. Davis*, Cuyahoga App. No. 82855, 2004-Ohio-5027; *State v. McPherson*, Cuyahoga App. No. 82558, 2004-Ohio-5202. Therefore, the trial court erred in dismissing the charge against Evans.

{¶ 4} As for Evans’ argument that prosecuting him for escape violates the ex post facto clause of the United States Constitution, we find that the Ohio Supreme Court implicitly rejected this argument. In *Thompson*, supra, the Court emphasized that it was the parolee’s failure to report

which constituted a new criminal offense, occurring after March 17, 1998. “Thus, [the parolee] is subject to the law regarding escape as it existed when he failed to report.” Id. at ¶ 16. Accordingly, imposing a sentence for a new felony offense under the law in effect at the time of the new offense does not violate the ex post facto clause.

{¶ 5} The State’s sole assignment of error is sustained.

Judgment reversed and case 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 the costs herein.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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.

MICHAEL J. CORRIGAN, A.J. and

DIANE KARPINSKI, J. CONCUR

COLLEEN CONWAY COONEY

JUDGE

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).