

[Cite as *State v. Douglas*, 2004-Ohio-3605.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT  
COUNTY OF CUYAHOGA  
No. 83743, 83769

STATE OF OHIO,	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
vs.	:	AND
JOHN DOUGLAS,	:	OPINION
Defendant-Appellee	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	JULY 8, 2004
	:	
CHARACTER OF PROCEEDING	:	Criminal appeal from Common Pleas Court Case No. CR-419802 CR-424020
JUDGMENT	:	REVERSED AND REMANDED
DATE OF JOURNALIZATION	:	

APPEARANCES:

For Plaintiff-Appellant:

WILLIAM D. MASON  
Cuyahoga County Prosecutor  
SCOTT ZARZYCKI  
Assistant County Prosecutor  
Justice Center - 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

For Defendant-Appellee:

ROBERT L. TOBIK  
Chief Public Defender  
JOHN T. MARTIN  
Assistant Public Defender  
1200 West Third Street  
100 Lakeside Place  
Cleveland, Ohio 44113

ANNE L. KILBANE, P.J.:

{¶1} In this consolidated appeal the State of Ohio tests the order of Judge David T. Matia that dismissed two criminal cases against John Douglas, a sexually oriented offender, who had been indicted for failure to verify address<sup>1</sup> and failure to provide change of address,<sup>2</sup> and for a separate charge of escape.<sup>3</sup> It claims error in the misapplication of the law as to escape, and the misapplication of *State v. Thompson*<sup>4</sup> to the sex offender registration requirements. We reverse and remand.

{¶2} The record reveals that following a jury trial in July of 1989, Douglas was convicted on two counts of rape<sup>5</sup> with a firearm specification and sentenced to concurrent seven- to twenty-five- year sentences on each rape count in addition to a three-year consecutive term for the firearm specification.<sup>6</sup>

{¶3} At the State's request, a sexual predator determination hearing was held in January of

---

<sup>1</sup>R.C. 2950.06.

<sup>2</sup>R.C. 2950.05.

<sup>3</sup>R.C. 2921.34.

<sup>4</sup>Cuyahoga App.No. 78919, 2002-Ohio-6478.

<sup>5</sup>R.C. 2907.02.

<sup>6</sup>Douglas appealed and we affirmed his conviction in *State v. Douglas* (May 9, 1991),

2000, and Douglas was adjudicated a sexually oriented offender. He was paroled in November of 2000, and in 2002 was indicted in CR 419802 for not timely notifying the sheriff of his address and change of address. When he failed to report to his parole officer, he was indicted in CR 424020 for escape.

{¶4} Douglas moved to dismiss case CR 424020 on the authority of *State v. Thompson*,<sup>7</sup> where this court held that a person who committed a crime before July 1, 1996, could not be subject to the charge of escape. The judge, however, dismissed both cases on the authority of *Thompson*, and the State claims two assignments of error set forth in the appendix to this opinion.

## I. ESCAPE

{¶5} This court's opinion in *Thompson*, supra, was appealed to the Ohio Supreme Court and was recently reversed.<sup>8</sup> The syllabus provides:

**“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.”**

{¶6} We are, therefore, constrained to find it was error to dismiss the offense of escape in CR 424020. This assignment of error has merit.

## II. FAILURE TO NOTIFY

{¶7} The State contends it was error to sua sponte dismiss CR 419802 based on *Thompson*, supra because the charge of escape was not an issue. We agree.

---

Cuyahoga App. No. 58493.

<sup>7</sup>Cuyahoga App.No. 78919, 2002-Ohio-6478.

<sup>8</sup>(2004), 102 Ohio St.3d 287, 2004-Ohio-2946.

{¶8} In 1963, Ohio enacted a sex offender registration statute<sup>9</sup>, which was revised in 1996 as part of H.B. 180.<sup>10</sup> The registration and notification requirements contained in R.C. 2950.04, 2950.05, 2950.06, 2950.10, and 2950.11 became effective July 1, 1997, and applied to all three classifications of sex offenders, and also applied to offenders who were sentenced for a sexual offense before or after the effective date of the statute, regardless of when the sexual offense occurred.<sup>11</sup>

{¶9} Douglas was adjudicated a sexually oriented offender and ordered to register, verify, and notice any address change under the requirements of R.C. 2950.04, 05, and 06.

{¶10} Douglas claims that the principles of statutory construction require a liberal construction in his favor, that the Ohio constitution supports a dismissal, and that his prosecution violates *ex post facto* laws. In *State v. Cook*<sup>12</sup>, however, the Ohio Supreme Court addressed these issues and held that “the registration and address verification provisions of R.C. Chapter 2950 are *de minimis* procedural requirements that are necessary to achieve the goals of R.C. Chapter 2950.”

{¶11} The State charged that Douglas was required to verify his current address and employment, along with other information, yearly for ten years but failed to do so.<sup>13</sup> It charged that he was also required to give the sheriff written notice of any change of address seven days prior to

---

<sup>9</sup>See former R.C. Chapter 2950, 130 Ohio Laws 669.

<sup>10</sup>146 Ohio Laws, Part II, 2560, 2561.

<sup>11</sup>Persons who had previously committed sexual offenses but were then in prison for non-sex crimes were subject to classification but not registration. *State v. Taylor*, 100 Ohio St.3d 172, 2003-Ohio-5452, 797 N.E.2d 504.

<sup>12</sup>83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570.

<sup>13</sup>R.C 2950.06

the change, and he did not.<sup>14</sup> Violation of these statutes result in penalties set forth in R.C 2950.99.

{¶12} In light of *Cook*, the judge’s sua sponte dismissal of CR 419802 on the authority of *Thompson* was erroneous. This assignment of error has merit.

Judgment reversed and remanded.

ANN DYKE, J.,                      And

SEAN C. GALLAGHER, J.,      CONCUR

**APPENDIX A:**

**“I. THE TRIAL COURT ERRED BY DISMISSING CR 419802 UNDER THE AUTHORITY OF STATE V. THOMPSON, CUYAHOGA APP. NO. 78919, 2002-OHIO-6478.**

**II. THE TRIAL COURT ERRED BY DISMISSING CR 424020 UNDER THE AUTHORITY OF STATE V. THOMPSON, CUYAHOGA APP. NO. 78919, 2002-OHIO-6478.”**

---

<sup>14</sup>R.C. 2950.05.