

[Cite as *State v. Welch*, 2004-Ohio-5028.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 83949

STATE OF OHIO :
 :
 Plaintiff-Appellant : JOURNAL ENTRY
 :
 vs. : AND
 :
 JESSE WELCH : OPINION
 :
 Defendant-Appellee :
 :
 :
 DATE OF ANNOUNCEMENT :
 OF DECISION : September 23, 2004
 :
 CHARACTER OF PROCEEDINGS : Criminal appeal from
 : Common Pleas Court
 : Case No. CR-439532
 :
 JUDGMENT : REVERSED AND REMANDED.
 :
 :
 :
 DATE OF JOURNALIZATION :
 APPEARANCES :

For plaintiff-appellant WILLIAM D. MASON, ESQ.
 Cuyahoga County Prosecutor
 By: MATTHEW T. NORMAN, ESQ.
 Assistant County Prosecutor
 Justice Center - 8th Floor
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 Cleveland, Ohio 44113

For defendant-appellee RICHARD SMITH, ESQ.
 21330 Center Ridge Road,
 Suite #6
 Rocky River, Ohio 44116

SEAN C. GALLAGHER, J.:

{¶ 1} Plaintiff-appellant state of Ohio ("state") appeals from the decision of the Cuyahoga County Court of Common Pleas which granted defendant-appellee Jesse Welch's ("Welch") motion to dismiss the indictment. Finding error in the proceeding below, we reverse and remand.

{¶ 2} The following facts give rise to this appeal. On April 11, 2003, Welch allegedly left Oriana House, a halfway house, while on parole and never returned. On July 15, 2003, Welch was indicted for one count of escape in violation of R.C. 2921.34. Welch filed a motion to dismiss based on *State v. Thompson*, Cuyahoga App. No. 78919, 2002-Ohio-6478. The state filed a brief in opposition. On November 18, 2003, the trial court granted Welch's motion to dismiss.

{¶ 3} The state timely appeals the decision of the trial court and advances one assignment of error for our review.

{¶ 4} "I. The trial court erred in dismissing the escape charge against defendant."

{¶ 5} We sustain the state's sole assignment of error in light of the recent decision of the Supreme Court of Ohio in *State v. Thompson* (2004), 102 Ohio St.3d 287, 290, which 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 underlying offense was committed. Welch's alleged escape occurred

after March 17, 1998, and therefore he is subject to the law regarding escape as it existed when he failed to report.

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 pursuant to Rule 27 of the Rules of Appellate Procedure.

ANNE L. KILBANE, P.J., AND

ANN DYKE, J., CONCUR.

SEAN C. GALLAGHER
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).