

[Cite as *State v. Duckworth*, 2004-Ohio-5874.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 84221

STATE OF OHIO, :
 :
 Plaintiff-Appellant : JOURNAL ENTRY
 :
 vs. : AND
 :
 CURTIS DUCKWORTH : OPINION
 :
 Defendant-Appellee :
 :
 :
 :
 DATE OF ANNOUNCEMENT : NOVEMBER 4, 2004
 OF DECISION :
 :
 :
 CHARACTER OF PROCEEDING : Criminal appeal from
 : Common Pleas Court
 : Case No. CR-436362
 :
 JUDGMENT : REVERSED AND REMANDED
 :
 DATE OF JOURNALIZATION :

APPEARANCES:

For Plaintiff-Appellant:

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ANNE L. KILBANE, P.J.:

{¶ 1} The State of Ohio appeals from an order of Judge Jose A. Villanueva that dismissed an indictment for escape against Curtis Duckworth.¹ Because our opinion in *State v. Thompson*² was reversed by the Ohio Supreme Court during the pendency of this appeal,³ we are required to reverse and remand.

{¶ 2} Duckworth was on parole following his release from prison for a crime committed before July 1, 1996. Because he was not home during an attempted visit by his parole officer, he was declared a parole violator at large and indicted for escape. He moved to dismiss the indictment because of this court's opinion that a person on parole for a crime committed before July 1, 1996, could not be guilty of escape.⁴ The State's sole assignment of error is set forth in the appendix to this opinion.

{¶ 3} The syllabus in *State v. Thompson* 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."⁵

{¶ 4} Duckworth argues on appeal that application of *State v. Thompson* violates

¹R.C. 2921.34.

²Cuyahoga App.No. 78919, 2002-Ohio-6478.

³*State v. Thompson* (2004), 102 Ohio St.3d 287, 2004-Ohio-2946, 809 N.E.2d 1134.

⁴See *Thompson*, Cuyahoga App. No. 78919, 2002-Ohio-6478, *supra* (vacating defendant's escape conviction).

⁵*Thompson*, 102 Ohio St.3d 287, at syllabus.

ex post facto laws. We have previously decided this argument has no merit.⁶ The Supreme Court has ruled that escape is a new criminal offense and the date of the “underlying crime is of no consequence.”⁷ Under this ruling, Duckworth’s escape charge is based on conduct that occurred after the statutory amendments and does not run afoul of ex post facto laws.⁸ The assignment of error has merit.

Judgment reversed and remanded.

APPENDIX - ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DISMISSING THE ESCAPE CHARGE AGAINST THE DEFENDANT.

It is ordered that appellant recover from appellee costs herein taxed.

It is ordered that a special mandate issue out of this court directing 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.

JAMES J. SWEENEY, J., And

⁶See *State v. Helton*, Cuyahoga App.No. 83960, 2004-Ohio-4231, at ¶6, n.3 (“Helton’s ex post facto argument is without merit.”); *State v. Davis*, Cuyahoga App.No. 82855, 2004-Ohio-5027 (rejecting appellant’s ex post facto argument).

⁷*Thompson*, 2004-Ohio-2946, at ¶17.

⁸*Id.*

ANTHONY O. CALABRESE JR., J., CONCUR

ANNE L. KILBANE
PRESIDING 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).