

[Cite as *State v. Green*, 2009-Ohio-5374.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92475

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LUCAS GREEN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-511905

BEFORE: Stewart, J., Cooney, A.J., and Dyke, J.

RELEASED: October 8, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Lucas Green, appeals the judgment of the Cuyahoga County Court of Common Pleas convicting him of escape. For the reasons that follow, we affirm.

{¶ 2} On June 12, 2008, a Cuyahoga County Grand Jury indicted Green on one count of escape in violation of R.C. 2921.34(A), a third degree felony.¹ The charge stemmed from Green's failure to report to his parole officer in April 2008 in violation of the terms of his postrelease control ("PRC"). Green waived his right to a jury trial and was tried to the bench. The trial court found Green guilty of escape and sentenced him to a one-year prison term.

{¶ 3} Green presents two assignments of error on appeal. He argues that there was insufficient evidence to support his conviction and that the conviction is against the manifest weight of the evidence. Although these arguments involve different standards of review, because they are substantially interrelated, we will consider them together.

{¶ 4} A challenge to the sufficiency of evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52. The

¹In a separate case, Green was indicted on four counts related to charges that he violated his sexual offender registration requirements. The two cases were joined for trial and, following trial, the court acquitted Green of the registration offenses.

challenge raises a question of law. On review for sufficiency, courts are to assess not whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* The relevant inquiry is "whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. A conviction based on insufficient evidence violates a defendant's Fifth Amendment right to due process. *Thompkins* at 386.

{¶ 5} Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." *Thompkins* at 387. When determining whether a conviction is against the manifest weight of the evidence, the appellate court reviews the entire record, "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 6} Green was convicted of escape under R.C. 2921.34, which provides in pertinent part:

{¶ 7} “(A)(1) No person, knowing the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.”

{¶ 8} “Detention” is defined, in pertinent part, to include, “* * * supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution * * *.” R.C. 2921.01(E). A defendant on postrelease control is “under detention” for purposes of the offense of escape. *State v. Boggs*, Montgomery App. No. 22081, 2008-Ohio-1583.

{¶ 9} Green argues that knowing he was under detention is a critical element of the escape offense. He contends that the state failed to carry its burden of proving he knew he was required to report. He claims that the conditions of supervision form fails to specifically state how often he had to report. He argues that the evidence shows he was on “monitored time” status with the Adult Parole Authority (“APA”) and therefore was not required to report. We disagree.

{¶ 10} In 2005, Green was convicted of two counts of gross sexual imposition (“GSI”). Upon release from prison, Green was subjected to PRC and sexual offender registration requirements. In April 2007, Green pled guilty to

escape in violation of R.C. 2921.34(A) and was sentenced to prison for one year.

Upon his release from prison on February 1, 2008, Green was returned to PRC and sex offender registration requirements under the original GSI sentence.

{¶ 11} At trial, Anita Phillips, a parole officer with the APA, testified that she had been supervising Green's postrelease control since October 2005. She explained that when Green was released from prison in February 2008, pursuant to APA policy, he was returned to PRC supervision under the old GSI conviction and not the new escape conviction. The state submitted a "PRC Result Notification" form dated January 30, 2008 that explained this procedure. The form showed a carbon copy was given to Green prior to his release.

{¶ 12} Phillips met with Green on February 4, 2008 to review the conditions of his supervision. These conditions were listed in a written "Conditions of Supervision" document prepared by the APA. Phillips testified she read and explained the 16 general conditions and the sex offender special conditions to Green and asked him if he had any questions. Green said he had no questions and signed the document.

{¶ 13} Phillips told Green he was to report to her twice monthly. Additionally, he was to phone in weekly. Green reported in person on February 27, 2008 and March 10, 2008. When Green failed to report on March 26, 2008 as instructed, Phillips sent Green a letter advising him of the missed date and instructing him to appear in person at the APA offices on April 9, 2008 or to contact her by telephone by that date. She mailed the letter to the East 117th

Street address in Cleveland that Green had given her in February. Green failed to appear or call her.

{¶ 14} On April 11, 2008, Phillips went to the East 117th Street address. When she was unable to confirm that Green was residing at that address, she declared his whereabouts unknown. On May 9, 2008, Phillips again returned to that address to try and contact Green. After being unable to verify Green's address for the second time, Phillips declared him a "violator at large" and a warrant was issued for his arrest.

{¶ 15} Detective Orlando, of the Cuyahoga County Sheriff's Department Sex Offender's Unit, also testified at trial. She stated that on February 5, 2008, Green appeared at her office to verify his address as part of his duty to register as a convicted sex offender. On the verification form, Green listed the East 117th Street address in Cleveland as his residence. In response to question number six on the form, Green indicated that he was on postrelease control to the APA and gave Phillips's name as his parole officer.

{¶ 16} On May 7, 2008, Orlando went to the East 117th Street address and attempted to verify Green's residency. She was unable to make contact with anyone, so she left a business card in the door with a notation for Green to call her. Green did not call her but did appear on June 23, 2008 at the sheriff's department office and completed a verification of address form listing the same East 117th Street address as his residence.

{¶ 17} The defense presented the testimony of Teresa Green. She testified that she was married to Green's brother. She said that Green lived with her and her husband and their son at the East 117th Street apartment from 2005 until June 2008. She presented opened and unopened mail addressed to Green at that address. She said she knew Green was on postrelease control and told him to make sure he went to his meetings.

{¶ 18} Additionally, the defense presented documents from March 2007 showing that Green was placed on "monitored time" and did not have to report for supervision. Green did not testify.

{¶ 19} Upon review of the record, we are unpersuaded by Green's argument that upon his release from prison in February 2008, he was returned to "monitored time" status and therefore had no active reporting requirement. "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life. R.C. 2929.01(Z). The "Monitored Time Conditions of Supervision" form submitted by the defense at trial states: "You are subject to the above conditions until you are notified by the Adult Parole Authority." Above Green's signature it states: "I understand that violation of any term of this agreement may result in the imposition of more restrictive sanctions or revocation." On April 13, 2007, appellant entered a plea of guilty to escape in violation of R.C. 2921.34 and was sentenced to one year imprisonment. Thus, appellant did not lead a law-abiding life and violated the monitored time

conditions. Additionally, parole officer Phillips testified that when she met with appellant upon his release from prison in February 2008, she notified him that as a result of this violation he was returned to active supervision status.

{¶ 20} The testimonies of Phillips, Orlando, and Teresa Green show that Green knew he was on postrelease control following his release from prison in February 2008. Phillips testified that Green initially reported as required, and signed paperwork regarding the conditions of his postrelease control. When Green failed to report on March 26, 2008, Phillips sent him a letter informing him that he had to appear or call by April 9, 2008 and that failure to comply could jeopardize his parole status. By not reporting to his parole officer in April as instructed, Green violated his postrelease control. After viewing the record in a light most favorable to the prosecution, we find that a rational trier of fact could find all of the elements of escape proven beyond a reasonable doubt. Additionally, we cannot find that the trial court lost its way or created a manifest miscarriage of justice when it found Green guilty of escape. Accordingly, Green's two assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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.

The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MELODY J. STEWART, JUDGE _____

COLLEEN CONWAY COONEY, A.J., and
ANN DYKE, J., CONCUR