

[Cite as *State v. Rouse*, 2004-Ohio-4972.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellee

v.

FRANKIE R. ROUSE

Appellant

C.A. No. 04CA0021

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 93-CR-0143

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Appellant, Frankie Rouse, has appealed from an order of the Wayne County Court of Common Pleas, which found him guilty of escape for a violation of his parole and sentenced him to a community control sanction. This Court affirms.

{¶2} Appellant pled guilty to robbery in 1995 and was sentenced to an indefinite prison term of three to fifteen years. While still on parole in March 2003, Appellant left his prescribed residence, in violation of his parole, and was indicted for Escape, per R.C. 2921.34(A)(1), a second degree felony. Upon

Appellant's plea of no contest, the trial court found him guilty and sentenced him to 18 months of supervised probation and additional community service.

{¶3} Appellant has timely appealed, asserting one assignment of error.

II.

Assignment of Error

“THE COURT ERRED IN CONVICTING APPELLANT OF ESCAPE, BECAUSE THE REVISED R.C.2967.15(C)(2) APPLIES ONLY TO PERSONS WHO HAVE RECEIVED ‘STATED PRISON TERMS,’ R.C. 2967.021, AND APPELLANT IS NOT SUCH A PERSON, NOR IS HE A PERSON TO WHOM THE POST-1998 VERSION OF 2967.15 APPLIES AT ALL.”

{¶4} Appellant asserts that he cannot be charged with Escape for his underlying action because his underlying conviction pre-dates the statutory revision authorizing such a charge, or alternatively that the statutory revision does not apply to him by its particular language. We disagree.

{¶5} In his brief to this Court, Appellant begins his argument by stating that “the facts of this case and the applicable laws are ‘on all fours’ with those now being considered by the Ohio Supreme Court in *State v. Thompson* (2003), 98 Ohio St.3d 1560,” and later concludes that “the only hope for the present appellant is to await and receive a favorable Supreme Court opinion[.]” Thus, Appellant contends, and we agree, that this case is governed by the outcome of *State v. Thompson*. Since the filing of his appeal, the Ohio Supreme Court has decided *State v. Thompson*, holding:

“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 offense was committed.” *State v. Thompson*, 102 Ohio St.3d 287, syllabus, 2004-Ohio-2946.

The Court explained that the crime at issue is the escape, a new criminal offense, and is unrelated to the time or nature of the underlying criminal offense. *Id.* at ¶17. Therefore, Appellant’s argument that he cannot be charged with escape because his underlying conviction pre-dates the statutory revision is contrary to Supreme Court law and therefore, lacks merit.

{¶6} Despite his emphasis that *State v. Thompson* is completely controlling, Appellant does offer an alternative argument: that even focusing solely on the current offense of escape, the statutory revision does not apply to him by its particular language, which is specifically limited to those persons “upon whom a court imposed a stated prison term.” R.C. 2967.021(B). Appellant’s argument requires the word “stated” in the statute to mean definite, as opposed to while his indefinite sentence of three to fifteen years. This Court does not agree with Appellant’s interpretation. This Court does not read the word “stated” to mean definite, just as we would not read the word unstated to mean indefinite. Rather, in this statute, this Court finds the word “stated” to mean articulated or expressed, and refuse to conclude that the expression or articulation of a prison sentence of three to fifteen years is not a stated term. Thus, Appellant’s argument is not persuasive. Appellant’s sole assignment of error is overruled.

III.

{¶7} Appellant's assignment of error is overruled. The order of the Wayne County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

BETH WHITMORE
FOR THE COURT

CARR, P.J.
BATCHELDER, J.
CONCUR

APPEARANCES:

CLARK W. OWENS, Attorney at Law, 132 South Market St., Suite 204, Wooster, OH 44691, for Appellant.

JOHN M. WILLIAMS, Assistant Prosecuting Attorney, 115 West Liberty St., Wooster, OH 44691, for Appellee.