

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY
July 31, 1996

MERIT DOCKET

96-761. State ex rel. Johnson v. Vine Street Hill Cemetery.
On amended motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Cook and Stratton, JJ.,
concur.
Pfeifer, J., dissents.

96-1095. State ex rel. Amato v. Mitrovich.
In Mandamus. On answer of respondent. Answer treated as motion to dismiss.
Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-1234. State ex rel. Smith v. Corrigan.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause
dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-1320. State ex rel. Wilson v. Wilkinson.
In Mandamus. On answer of respondent. Answer treated as motion to dismiss.
Motion to dismiss sustained. Cause dismissed.
Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.
Moyer, C.J., dissents and would grant an alternative writ.

96-1336. State ex rel. Gillum v. Mengel.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause
dismissed.
Moyer, C.J., F.E. Sweeney, Cook and Stratton, JJ., concur.
Douglas, Resnick and Pfeifer, JJ., dissent.

96-1346. State ex rel. Martin v. Ohio Adult Parole Auth.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause
dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-1370. State ex rel. Jackson v. Ohio Adult Parole Auth.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1372. Panzica Constr. Co. v. Ohio Cas. Ins. Co. Cuyahoga County, No. 69444. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B) and Whitelock v. Gilbane Bldg. Co. (1993), 66 Ohio St.3d 594, 613 N.E.2d 1032. This cause is therefore dismissed.

Moyer, C.J., Douglas, Resnick, Pfeifer and Cook, JJ., concur.
F.E. Sweeney and Stratton, JJ., dissent.

96-1397. State ex rel. Benitez v. Fuerst. In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1408. State ex rel. McClain v. Secy. of State. On answer of respondent of Licking County Board of Elections, motion for summary judgment of Licking County Board of Elections, answer of respondent Secretary of State, and motion for judgment on pleadings by Secretary of State. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1441. State ex rel. Fuller v. Stephenson. In Prohibition. On motion to dismiss and motion to dismiss of L. Allen Goldsberry and William R. Biddlestone. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1450. I'Juju v. Miller. In Mandamus. On answer of respondent Twyford & Donahey, motion to dismiss by James Jackson, motion to dismiss of Franklin County Public Defender, and answer of respondents Michael Miller et al. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1499. Linton v. Callahan. In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1538. Gaines v. Page. In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1584. Robertson v. Morgan. In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Cook and Stratton, JJ., concur.

Pfeifer, J., dissents and would grant an alternative writ.

96-1601. Hawthorne v. Turner.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL
CONSTITUTIONAL QUESTION AND DISCRETIONARY
APPEALS, IF APPLICABLE, NOT ALLOWED

96-263. State v. Potter.
Stark County, No. 1995CA00027.

96-667. State v. Baker.
Cuyahoga County, No. 68888.

96-687. Shamrock Athletic Club v. Ohio Liquor Control Comm.
Montgomery County, No. 15505.
Moyer, C.J., Cook and Stratton, JJ., dissent.

96-690. Kehoe v. Pline.
Cuyahoga County, No. 69182.
Stratton, J., not participating.

96-696. Bouillon v. Bouillon.
Seneca County, No. 13-95-24.

96-697. State v. Loyd.
Hamilton County, No. C-950368.
Stratton, J., not participating.

96-703. Lane v. Russell.
Warren County, No. CA95-10-101.

96-706. Womelsdorf v. Reichert.
Hamilton County, No. C-950224.

96-713. Fairfield v. CSX Transportation, Inc.
Butler County, No. CA95-09-149.

96-715. Mihalega v. Mitchell.
Franklin County, No. 95APE09-1142.

96-723. BP Oil Co. v. Dayton Bd. of Zoning Appeals.
Montgomery County, No. 15366.
Moyer, C.J., dissents.

96-726. Akron v. Wait.
Summit County, No. 17373.

96-735. Johnson v. Allen.
Cuyahoga County, No. 68912.

96-736. State v. Patton.
Summit County, No. 17432.

96-737. Plazzo v. Nationwide Mut. Ins. Co.

Summit County, No. 17022. Discretionary appeal and Nationwide Mutual Insurance Company's cross-appeal denied.

Resnick, J., dissents.

Cook, J., not participating.

96-739. State v. Gebhart.

Hamilton County, No. C-950529.

Stratton, J., not participating.

96-742. State v. Washington.

Montgomery County, No. 14996.

96-744. In re Adkins.

Cuyahoga County, No. 69187.

96-750. State v. Neace.

Scioto County, No. 95CA2353.

96-754. State v. Dodson.

Franklin County, No. 95APA09-1253.

96-756. State v. Allen.

Greene County, No. 95CA38.

96-759. State v. Griggs.

Cuyahoga County, No. 67944.

96-760. Senz v. Mills.

Wayne County, No. 95CA0020.

96-769. Corradi v. Emmco Corp.

Cuyahoga County, No. 67407.

96-771. State v. Mangus.

Cuyahoga County, No. 68679.

96-772. State v. Young.

Cuyahoga County, No. 69010.

96-776. Taris v. Jordan.

Franklin County, No. 95APE08-1075.

96-778. Bunnell v. Shell Oil Station.

Warren County, No. CA95-08-080.

96-779. State v. Creasey.

Cuyahoga County, No. 65717.

96-783. State v. Brewer.

Montgomery County, No. 15166.

96-789. In re Meredith.

Cuyahoga County, No. 68938.

96-790. State v. Smith.

Hamilton County, No. C-940852.

96-792. State v. Daniels.

Hamilton County, Nos. C-950347 and C-950348.
Stratton, J., not participating.

96-793. State v. Brookbank.
Knox County, No. 96CA000005.

96-794. Yonkings v. Wilkinson.
Franklin County, No. 95APE07-904.
Moyer, C.J., dissents.

96-795. State v. Durgan.
Hamilton County, No. C-960046.

96-796. State v. McMeans.
Franklin County, No. 95APA08-1011.

96-800. Highland Hts. Bd. of Bldg. & Zoning Appeals v. Grande.
Cuyahoga County, No. 69082.
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

96-801. Fallang v. Fallang.
Butler County, No. CA95-06-111.

96-805. Employers Reinsurance Corp. v. Worthington Custom Plastics, Inc.
Franklin County, No. 95APE05-618.
Moyer, C.J., dissents.

96-807. State v. Van Driest.
Wayne County, No. 95CA0068.

96-809. State v. Russell.
Summit County, No. 17407.

96-810. In re Smallwood.
Clinton County, Nos. CA95-05-014 and CA95-05-015.

96-813. Haller v. Haller.
Warren County, No. CA95-06-063.
Moyer, C.J., and Stratton, J., dissent.

96-814. State v. Standberry.
Cuyahoga County, No. 69079.

96-818. In re Rutherford.
Cuyahoga County, No. 70247.
Stratton, J., dissents.

96-822. Stegman v. Cleveland.
Cuyahoga County, No. 69018.

96-824. State v. Lewis.
Huron County, No. H-95-026.

96-826. State v. Hammers.
Medina County, No. 2469-M.

96-828. Ohio College of Limited Med. Practice v. State Med. Bd.

Franklin County, No. 95APE08-1108.
Douglas, J., dissents.

96-830. State v. Wilkerson.
Hamilton County, No. C-950510.
Stratton, J., not participating.

96-831. State v. Gaspard.
Putnam County, No. 12-95-12.

96-835. State v. Marlow.
Summit County, No. 17400.

96-842. State v. Schmitz.
Sandusky County, No. S-95-031.
Resnick, J., not participating.

96-863. State v. Davis.
Lorain County, No. 94CA005989.

96-875. Sexton v. Kidder Peabody & Co., Inc.
Cuyahoga County, No. 69093.

MOTION DOCKET

94-1964. State v. Garner.
Hamilton County, No. C-920864. On motion to vacate entry of June 25, 1996. See
76 Ohio St.3d 1401, ___ N.E.2d ___. Motion denied.

Douglas, Resnick and F.E. Sweeney, JJ., would grant the motion and reset
the date to September 22, 1996.

96-1127. Westfield Cos. v. Kette.
Erie County, No. E-95-051. On motion to expedite. Motion denied.
Douglas, J., dissents.

96-1270. VFW Post 1238 v. Ohio Liquor Control Comm.
Huron County, No. H-95-065. On review of order certifying a conflict. The
court determines that a conflict exists; the parties are to brief the issue
stated in the court of appeals' Opinion and Judgment Entry, filed May 11, 1996,
at pages 15-16:

"[T]his court, sua sponte, certifies this cause to the Supreme Court of
Ohio as being in conflict with (1) VFW Post 9622 v. Liquor Control Comm. (Mar.
11, 1996), Warren App. No. CA95-09-090, unreported, (2) FOE Aerie 2251 v. Liquor
Control Comm. (Oct. 30, 1995), Tuscarawas App. No. 95AP030020, unreported; and
(3) North Toledo Arrow Club v. Liquor Control Comm. (June 1, 1993), Franklin
App. No. 93-AP-288, unreported, on the issue of whether the Exclusionary Rule
applies to a warrantless administrative search of a liquor permittee's premises
for the purpose of discovering illegal activity, such as gambling devices. See
Section 3(B)(4),
Article IV of the Ohio Constitution; Whitelock v. Gilbane Bldg. Co. (1993), 66
Ohio St.3d 594, 596. It is so ordered."

Sua sponte, cause consolidated with 96-1271, infra.
Resnick, J., not participating.

96-1409. State v. Bronaugh.

Hamilton County, No. C-950369. On motion for leave to file delayed appeal.
Motion denied.

Moyer, C.J., Douglas and Stratton, JJ., dissent.

96-1412. State v. Germany.

Cuyahoga County, No. 63568. On motion for leave to file delayed appeal. Motion denied.

96-1413. State v. Smith.

Cuyahoga County, No. 68745. On motion for leave to file delayed appeal. Motion denied.

Resnick and Pfeifer, JJ., dissent.

96-1477. State v. Carver.

Paulding County, No. 11-95-14. On motion for leave to file delayed appeal. Motion denied.

Resnick, Pfeifer and Stratton, JJ., dissent.

96-1479. State v. Hanks.

Franklin County, No. 95APA10-1386. On motion for leave to file delayed appeal. Motion denied.

Resnick, Pfeifer and Stratton, JJ., dissent.

96-1521. State v. Adams.

Franklin County, No. 95APA01-61. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

96-1522. State v. Nelson.

Montgomery County, No. 14775. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

96-1524. State v. Hayden.

Franklin County, No. 95APA05-559. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

96-1553. State v. Kimbrough.

Lorain County, No. 93CA005625. On motion for leave to file delayed appeal. Motion denied.

DISCRETIONARY APPEALS ALLOWED

96-709. State v. Phelps.

Union County, No. 14-95-27. Sua sponte, cause held for the decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232; briefing schedule stayed.

Stratton, J., not participating.

96-718. Hughes v. Ohio Bur. of Motor Vehicles.

Hamilton County, No. C-940856.

Pfeifer, J., dissents.

96-730. State v. Sanchez.

Delaware County, No. 96CAC01001. Sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

Stratton, J., not participating.

96-740. Blue Cross & Blue Shield of Ohio v. Schmidt.
Lucas County, No. L-94-291.

Moyer, C.J., Resnick and Cook, J.J., dissent.

96-758. State v. Barr.

Cuyahoga County, No. 17342. Sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

Stratton, J., not participating.

96-799. State v. Brandon.

Hocking County, No. 95CA14. Sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

Stratton, J., not participating.

96-838. Akron v. Kirby.

Summit County, No. 17307. Discretionary appeal allowed on Proposition of Law No. I only; sua sponte, cause held for the decision in 95-1365, State v. Hochhausler, Warren County, Nos. CA93-12-104 and CA93-12-105; briefing schedule stayed.

Stratton, J., not participating.

96-876. Gallia Cty. Veterans Serv. Comm. v. Gallia Cty. Bd. of Commrs.

Gallia County, No. 95CA13. (Appeal by Gallia County Veterans Service Commission; second appeal of Rhonda Lynch and Steven Swords.)

F.E. Sweeney, Pfeifer and Cook, J.J., dissent.

96-930. State v. Williams.

Hamilton County, No. C-950530.

F.E. Sweeney, Pfeifer and Cook, J.J., dissent.

96-996. State v. Dennis.

Medina County, No. 2512-M. Sua sponte, cause held for decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

Stratton, J., not participating.

96-1271. VFW Post 1238 v. Ohio Liquor Control Comm.

Huron County, No. H-95-065.

Resnick, J., not participating.

DISCRETIONARY APPEALS NOT ALLOWED

96-682. Benzinger v. Benzinger.

Hamilton County, Nos. C-940974 and C-940990.

Douglas, J., dissents.

96-683. State v. Lucas.

Montgomery County, No. 15204.

96-684. Burnworth v. Harper.

Washington County, No. 95CA12.

F.E. Sweeney, J., dissents.

96-695. Milliron v. Cloverleaf Local School Dist. Bd. of Edn.

Medina County, No. 2450-M.

Moyer, C.J., and Stratton, J., dissent.

96-699. First Fed. Sav. Bank v. Luby.
Summit County, No. 17562.
Stratton, J., dissents.

96-707. Busch v. Abel.
Hamilton County, No. C-950163.

96-708. Madunicky v. Ohio Dept. of Transp.
Franklin County, No. 95API08-975.

96-711. Levario v. Motorists Mut. Ins. Co.
Sandusky County, No. S-95-025.
Resnick, J., not participating.

96-716. Cleveland Police Patrolmen's Assn. v. White.
Cuyahoga County, No. 68230.
Douglas, J., dissents.

96-717. Criterioria v. Cincinnati Ins. Co.
Stark County, No. 1995CA00248.
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

96-720. St. Ann's Hosp. v. Arnold.
Franklin County, No. 95APG04-485.
Moyer, C.J., dissents.

96-727. Miller v. Loral Defense Sys., Akron.
Summit County, No. 17309.
Douglas, J., dissents.

96-728. Nemeth v. Aced, Hobbs, Wassell & O'Connor.
Franklin County, No. 95APE06-768.

96-729. State v. Chatman.
Marion County, No. 9-94-61.
Stratton, J., dissents.

96-731. Bruss v. Vindicator Printing Co.
Mahoning County, No. 94 C.A. 190.

96-732. Lonergan v. Allied Chem. Laboratories.
Hamilton County, No. C-950474.
Douglas, J., dissents.
Stratton, J., not participating.

96-733. Patterson v. Blanton.
Franklin County, No. 95APE07-858. Discretionary appeal and Jack E. Patterson's cross-appeal denied.

96-738. Safeco Ins. Co. v. Haire.
Hamilton County, Nos. C-950089 and C-950505.

96-743. Ruben v. Lutz.
Franklin County, No. 95APE09-1185.

96-762. State v. Lentz.
Trumbull County, No. 3813.

96-763. Kidd v. Cubby Drilling.
Stark County, No. 1995CA00317.

96-766. Riley v. Progressive Specialty Ins. Co.
Warren County, Nos. CA95-11-106 and CA95-11-113.

96-767. Zupancic v. Champion Distrib. Serv.
Summit County, No. 17330.

96-780. Blevins v. A-Best Products Co.
Scioto County, No. 94CA2292.
Douglas and Stratton, JJ., dissent.

96-781. Pennington v. A-Best Products Co.
Scioto County, No. 94CA2289.
Stratton, J., dissents.

96-788. Malone v. Howell Viggers Corp.
Summit County, Nos. 17348 and 17353. (Appeal by Kellie L. Malone; second appeal
by Stephen C. Aron.)
Douglas, J., dissents.

96-791. Keller v. Beacon Journal Publishing Co.
Summit County, No. 17428.
Moyer, C.J., Douglas and F.E. Sweeney, JJ., dissent.

96-798. Klein v. Biscup.
Cuyahoga County, Nos. 68615 and 68659.
Moyer, C.J., dissents.

96-804. Bowmer v. Dettelbach.
Lucas County, No. L-95-161.
Moyer, C.J., and Douglas, J., dissent.

96-812. Michigan Millers Ins. Co. v. Anspach.
Montgomery County, No. 15211.
Moyer, C.J., Cook and Stratton, JJ., dissent.

96-817. Marx v. Ohio State Univ. College of Dentistry.
Franklin County, No. 95APE07-872.

96-821. Johnston v. Great Lakes Constr. Co.
Lorain County, No. 95CA006111.

96-823. In re Johns.
Defiance County, No. 4-95-18.
Moyer, C.J., and Stratton, J., dissent.

96-833. State v. Estes.
Montgomery County, No. 15311.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-853. State v. Williamson.

Montgomery County, No. 14947.

Moyer, C.J., and Douglas, J., dissent.

96-874. State v. Grayes.

Cuyahoga County, No. 68990.

RECONSIDERATION DOCKET

94-1645. State ex rel. Oliver v. Southeastern Erectors, Inc.

Franklin County, No. 93APD04-597. Reported at 76 Ohio St.3d 26, ___ N.E.2d ___.

On motion for reconsideration. Motion denied.

Pfeifer, Cook and Stratton, JJ., dissent.

94-2511. Roberts v. United States Fid. & Guar. Co.

Erie County, No. E-93-35. On motion for reconsideration or clarification by Roberts. Motion denied.

F.E. Sweeney and Pfeifer, JJ., dissent.

On motion for reconsideration by U.S.F. & G. Co. Motion denied.

Petree and Cook, JJ., dissent.

Charles R. Petree, J., of the Tenth Appellate District, sitting by assignment.

Thomas J. Grady, J., of the Second Appellate District, sitting for Resnick, J.

95-1151. Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, No. 93-D-954. Reported at 75 Ohio St.3d 601, ___ N.E.2d ___.

On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-1216. Lakefront Lines, Inc. v. Tracy.

Board of Tax Appeals, Nos. 93-H-1125, 93-H-1126, 94-H-69, 94-H-70, 94-H-71 and 94-H-72. Reported at 75 Ohio St.3d 627, ___ N.E.2d ___. On amended motion for consideration. Motion denied.

Stratton, J., not participating.

95-1253. Akzo Salt, Inc. v. Ohio Bur. of Emp. Serv.

Cuyahoga County, No. 67221. Reported at 75 Ohio St.3d 1223, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer and Cook, JJ., dissent.

96-269. Dalioia v. Franciscan Health Sys. of Cent. Ohio, Inc.

Franklin County, No. 95APE06-808. Reported at 76 Ohio St.3d 1404, ___ N.E.2d ___.

On motion for reconsideration. Motion granted; sua sponte, discretionary appeal allowed.

Moyer, C.J., Resnick and F.E. Sweeney, JJ., dissent.

96-328. State v. Johnson.

Ross County, No. 94CA2004. Reported at 76 Ohio St.3d 1405, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Cook, J., dissents.

96-330. Cherovsky v. St. Luke's Hosp. of Cleveland.

Cuyahoga County, No. 68326. Reported at 76 Ohio St.3d 1405, ___ N.E.2d ___. On motion for reconsideration. Motion granted; sua sponte, discretionary appeal allowed.

Cook and Stratton, JJ., dissent.

96-362. State Auto. Mut. Ins. Co. v. Willis.
Miami County, No. 95CA40. Reported at 76 Ohio St.3d 1409, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.
Stratton, J., not participating.

96-370. State v. Talani.
Cuyahoga County, No. 68750. Reported at 76 Ohio St.3d 1406, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-385. Natl. City Bank v. Mustric.
Franklin County, No. 95APE06-805. Reported at 76 Ohio St.3d 1409, ___ N.E.2d
___. On motion for reconsideration. Motion denied.

96-414. Ryan v. Terra Vista Estates, Inc.
Cuyahoga County, No. 68933. Reported at 76 Ohio St.3d 1409, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-459. State v. Sherman.
Mahoning County, No. 94 C.A. 86. Reported at 76 Ohio St.3d 1406, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

96-914. Lonberger v. Shiplevy.
Allen County, No. 1-96-8. Reported at 75 Ohio St.3d 1521, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-1387. State ex rel. Rife v. Klosterman.
In Mandamus and Prohibition. Reported at 76 Ohio St.3d 1404, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.