

11/12/97

## SUPREME COURT OF OHIO

COLUMBUS

## ANNOUNCEMENT

1:00 P.M.

WEDNESDAY

November 12, 1997

## MERIT DOCKET

97-1677. Ohio Edison Co. v. Tracy.  
Board of Tax Appeals, No. 97-K-322. On motion to dismiss.  
Motion to dismiss sustained. Cause dismissed.

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

Cook, J., not participating.

97-1838. State ex rel. Block v. Ghee.  
In Mandamus. On answer of respondents. Answer treated as  
motion to dismiss. Motion to dismiss sustained. Cause  
dismissed.

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

97-1895. State ex rel. Boyd v. Saunders.  
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 Lundberg Stratton, JJ., concur.

97-1934. State ex rel. Bates v. Tenth Appellate Dist.  
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 and  
Cook, JJ., concur.

Lundberg Stratton, J., would grant the writ and direct  
counsel to forward his copy of transcript.

97-1943. State ex rel. Hutchinson v. Gowdown.  
In Procedendo. On motion to dismiss. Motion to dismiss  
sustained. Cause dismissed.

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

97-1955. State ex rel. Goney v. Gowdown.  
In Procedendo. On motion to dismiss. Motion to dismiss

sustained. Cause dismissed.

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

97-1958. Gibson 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 Lundberg Stratton, JJ., concur.

97-2000. Caldwell v. Brigano.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2004. Mosley v. Mack.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2010. State ex rel. Jones v. Trumbull Cty. Court of Common Pleas.

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

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

97-2016. Justice v. Walker.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2027. Jones v. McAninch.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2035. Humes v. Mitchell.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2076. Smith v. Wingard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2077. Sproat v. Wingard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2144. Wyckhouse v. Wingard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2166. Justice v. Walker.  
In Habeas Corpus. Sua sponte, cause dismissed.  
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook  
and Lundberg Stratton, JJ., concur.

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

97-1759. State v. Creech.  
Scioto App. No. 96CA2476.

97-1762. State v. King.  
Warren App. No. CA97-06-068.

97-1765. State v. Kidd.  
Greene App. No. 96CA62.

97-1766. State v. Johnson.  
Lake App. No. 96-L-012. (Appeal of state of Ohio, and cross-  
appeal of Maurice L. Johnson.)

97-1769. Ball v. Tate.  
Belmont App. No. 97BA15.

97-1771. Garrett v. Consol. Rail Corp.  
Union App. No. 14-96-24. On motion for admission pro hac vice  
of Ralph G. Wellington, Nancy Winkelman, and Glenn A. Weiner;  
motion for admission pro hac vice of Daniel Saphire; and motion  
for admission pro hac vice of David E. Neumeister and James K.  
Horstman. Motions denied and discretionary appeal denied.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-1772. Gollihue v. Consol. Rail Corp.  
Union App. No. 14-96-23. On motion for admission pro hac vice  
of Ralph G. Wellington, Nancy Winkelman, and Glenn A. Weiner;  
and motion for  
admission pro hac vice of Daniel Saphire. Motions denied and  
discretionary appeal denied.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-1773. State v. Gonzales.  
Huron App. No. H-96-061.

97-1780. Ellithorp v. Barberton City School Dist. Bd. of Edn.  
Summit App. No. 18029.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

97-1782. In re Karasek.  
Montgomery App. No. 15891.

97-1783. State v. Hill.  
Cuyahoga App. No. 70930.  
Pfeifer, J., dissents.

97-1786. State v. Jerido.

Cuyahoga App. No. 70752.

97-1789. State v. Bell.  
Lucas App. No. L-97-11-92.

97-1793. J.R. Operating Co. v. Lindsay.  
Mahoning App. No. 96 C.A. 35.

97-1795. State v. Allen.  
Cuyahoga App. Nos. 72032 and 72033.  
Moyer, C.J., dissents.

97-1796. State v. Estep.  
Ross App. No. 97CA2265.

97-1797. State v. Worthy.  
Lorain App. No. 96CA006576.  
Douglas, J., not participating.

97-1800. K-Mart Corp. v. Westlake City Council.  
Cuyahoga App. No. 69953.  
Moyer, C.J., and Pfeifer, J., dissent.

97-1801. State v. McMillan.  
Lorain App. No. 96CA006522.  
Douglas, J., not participating.

97-1804. State v. Shoemaker.  
Ross App. No. 97CA2264.

97-1805. State v. Iacovone.  
Wayne App. No. 96CA0060.

97-1807. Coleman v. Mullins.  
Scioto App. No. 96CA2462.

97-1808. State v. Ruffle.  
Warren App. No. CA96-12-124.

97-1813. Martin v. Roeder.  
Marion App. Nos. 9-94-46, 9-95-27 and 9-95-42.

97-1816. State v. Hatcher.  
Cuyahoga App. No. 70857.

97-1817. State v. Henton.  
Ashtabula App. No. 96-A-0015.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1824. State v. Brundidge.  
Cuyahoga App. No. 70807.

97-1828. State v. Blackmon.  
Summit App. No. 18072.

97-1829. State v. Jones.  
Franklin App. No. 96APA11-1515.

97-1832. State v. Hunter.  
Cuyahoga App. Nos. 70933 and 70934.

97-1833. ABM Farms, Inc. v. Woods.  
Fairfield App. No. 96CA0088.

97-1835. State v. Meek.  
Lorain App. No. 97CA006805.

97-1845. State v. Murawski.  
Cuyahoga App. No. 70854.

97-1846. State v. Wise.  
Lake App. No. 96-L-168.

97-1847. State v. Semenchuk.  
Cuyahoga App. No. 70084.

97-1849. State v. Williams.  
Summit App. No. 17940.

97-1852. State v. Ball.  
Cuyahoga App. No. 71036.  
Pfeifer, J., dissents.

97-1856. State v. Isham.  
Montgomery App. No. 13909.

97-1866. State v. Popke.  
Erie App. No. E-97-080.

97-1869. State v. Guardado.  
Cuyahoga App. No. 71660.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-1872. State v. Bryant-Bey.  
Lucas App. No. L-93-184.  
Resnick, J., not participating.

97-1873. State ex rel. Ohio Valley Coal Co. v. Indus. Comm.  
Franklin App. No. 97APE03-309.  
Resnick, J., dissents.

97-1875. State v. Carpenter.  
Cuyahoga App. Nos. 70612, 70614 and 70616.

97-1877. Collier v. Borrer Corp.  
Franklin App. No. 97APE04-547.

97-1881. Dayton v. Karasek.  
Montgomery App. No. 15836.

97-1882. State v. Hurney.  
Cuyahoga App. No. 71053.

97-1886. Harris v. Akron.

Summit App. No. 17945.

97-1889. State v. Ritchie.  
Montgomery App. No. 15792.

97-1892. Davco Constr. Co. v. Dom Italiano's Used Car Corner,  
Inc.  
Mahoning App. No. 92 C.A. 131.  
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

97-1896. State v. Cleveland.  
Lorain App. No. 96CA006357.

97-1898. Talarek v. Miles.  
Lorain App. No. 96CA006567.  
Douglas, J., not participating.

97-1901. State v. Wren.  
Richland App. No. 97CA19.

97-1918. State v. Luoma.  
Montgomery App. No. 16338.  
Lundberg Stratton, J., dissents.

97-1925. State v. Thompson.  
Cuyahoga App. No. 72641.

97-1928. Colerain Hills Invest. Co. v. Hamilton Cty. Bd. of  
Revision.  
Hamilton App. No. C-960158.  
Pfeifer, J., dissents.

97-1940. West v. Silverton.  
Hamilton App. No. C-960146.

97-1941. Russo v. Cleveland.  
Cuyahoga App. No. 72276.  
Moyer, C.J., and Cook, J., dissent.

97-1968. State v. Bellish.  
Mahoning App. No. 94 C.A. 157.

#### MOTION DOCKET

96-1953. Metrohealth Med. Ctr. v. Hoffmann-LaRoche, Inc.  
Certified State Law Question, No. 1:93 CV 484. On motion for  
leave to file statement of additional authorities. Motion  
denied.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

97-1088. Elkem Metals Co., L.P. v. Washington Cty. Bd. of  
Revision.  
Board of Tax Appeals, No. 95-T-719. On request for oral  
argument. Request denied.  
Douglas and Lundberg Stratton, JJ., dissent.

97-1175 and 97-1176. State v. Kinney.  
Cuyahoga App. No. 71353. On motion for attorney fees and expenses. Motion granted.

Moyer, C.J., and Pfeifer, J., dissent.

97-1962. Cheek v. Indus. Powder Coatings, Inc.  
Certified State Law Question, No. 3:96 CV 7771. On review of preliminary memorandum pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question from the United States District Court for the Northern District of Ohio, Western Division:

"Whether an individual employee not otherwise deemed to be an 'employer' under the statute, may be individually liable for alleged violations of the employment discrimination provisions of the Ohio Civil Rights Act, Ohio Rev.Code 4112.01(A)(2), 4112.02(A), and 4112.99?"

Sua sponte, cause held for the decision in 97-1595, Genaro v. Cent. Transport, Inc., Certified Question of State Law Nos. 1:96 CV 2282, 1:97 CV 00598, and 1:97 CV 601; briefing schedule stayed.

97-1997. Nibert v. Ohio Dept. of Rehab. & Corr.  
Madison App. No. CA96-11-050. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals' Entry Granting Motion for Certification filed September 10, 1997:

"When a party files a notice of appeal with an administrative agency within the fifteen day period set forth in R.C. 119.12, but fails to file a copy of the notice of appeal with the appropriate court of common pleas within the fifteen day period, does the court of common pleas have subject matter jurisdiction over the appeal?"

The conflict cases are Hayes v. Montgomery Cty. Bd. of Commrs. (1994), 94 Ohio App.3d 597, 641 N.E.2d 277; Hagan v. Marlboro Twp. Bd. of Zoning Appeals (Jan. 29, 1996), Stark App. No. 95CA0086, unreported, 1996 WL 74009; and State Med. Bd. of Ohio v. Brasseur (July 2, 1986), Licking App. No. CA3171, unreported.

Sua sponte, cause consolidated with 97-1905, infra.

97-2034. State v. Tipton.  
Lorain App. No. 95CA006091. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Pfeifer, J., dissent.

97-2044. State v. Moore.  
Delaware App. No. 96CAA09052. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

97-2074. State v. Bell.  
Perry App. No. 96CA27. On motion for leave to file delayed appeal. Motion granted.

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

97-2151. Reynolds v. Morris.  
Franklin App. No. 97APE02-227. On motion for stay. Motion granted.

Pfeifer and Cook, JJ., dissent.

DISCRETIONARY APPEALS ALLOWED

97-1774. Mack v. Allstate Ins. Co.  
Butler App. No. CA96-12-261.

Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-1778. State v. Rush.  
Stark App. No. 96CA419.

Resnick and Pfeifer, JJ., dissent.

97-1820. In re Estate of Ross.  
Shelby App. No. 17-97-05.

Moyer, C.J., and Cook, J., dissent.  
Lundberg Stratton, J., not participating.

97-1905. Nibert v. Ohio Dept. of Rehab. & Corr.  
Madison App. No. CA96-11-050.

Pfeifer, J., dissents.

DISCRETIONARY APPEALS NOT ALLOWED

97-1700. Wollpert v. State Farm Mut. Ins. Co.  
Lake App. No. 96-L-093. (Appeal of Cincinnati Insurance Company, appeal of State Farm Mutual Automobile Insurance Company, and cross-appeal of Betty Wollpert.)

Douglas, J., would allow the cross-appeal only.

Moyer, C.J., and Lundberg Stratton, J., would allow the appeals and the cross-appeal.

97-1724. Smith v. Morrow Elec. Coop., Inc.  
Morrow App. No. CA829. (Appeal by Morrow Electric Cooperative, Inc., and cross-appeal of Frederick R. Smith.)

Douglas, J., would allow the cross-appeal only.

97-1725. World Diamond, Inc. v. Hyatt Corp.  
Franklin App. No. 96APE10-1361. (Appeal of Hyatt Corporation, and cross-appeal of World Diamond, Inc., D & R Diamond, Inc., and Brad Garman and Lisa Garman.)

Lundberg Stratton, J., would allow the appeal only.

Moyer, C.J., would allow the appeal and the cross-appeal.

97-1735. Desmarais v. Strauss & Troy.  
Hamilton App. No. C-960539. (Appeal of Strauss & Troy, and cross-appeal of Industrial Commission of Ohio and Administrator, Bureau of Workers' Compensation.)

Lundberg Stratton, J., would allow the cross-appeal only.

Douglas, J., would allow the appeal and the cross-appeal.

97-1741. Reeder v. Hunt.  
Morrow App. No. CA835.

Resnick and Lundberg Stratton, JJ., dissent.

97-1752. Daniels v. Williamson.  
Greene App. No. 96CA146.

97-1788. Evans v. TNT Holland Motor Express.  
Cuyahoga App. Nos. 71391 and 71516.  
F.E. Sweeney, J., dissents.

97-1811. Buckeye Union Ins. Co. v. Zavarella Bros. Constr. Co.  
Cuyahoga App. No. 71227.  
Moyer, C.J., and Pfeifer, J., dissent.

97-1827. State v. Joseph.  
Allen App. No. 1-96-90.

97-1839. Welty v. Franklin Cty. Dept. of Human Serv.  
Franklin App. No. 96APE11-1508.

97-1843. Independence Fire Fighters Assn. v. Independence.  
Cuyahoga App. No. 70704.  
Moyer, C.J., dissents.

97-1848. Ft. Defiance Constr. & Supply, Inc. v. Grover Hill.  
Paulding App. No. 11-95-15.  
Douglas, J., dissents.

97-1862. Maulis v. Maulis.  
Portage App. No. 96-P-0190.

97-1870. Burger v. Cleveland Hts.  
Cuyahoga App. No. 72675.  
Moyer, C.J., Resnick and Cook, JJ., dissent.

97-1874. Suburban Nursing & Mobile Homes, Inc. v. Rhodes.  
Hamilton App. No. C-960949.

#### RECONSIDERATION DOCKET

96-203. Davis v. Immediate Med. Serv., Inc.  
Stark App. No. 94CA0253. Reported at 80 Ohio St.3d 10, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

96-962. Luntz Corp. v. Ohio Edison Co.  
Public Utilities Commission, No. 94-1783-EL-CSS. Reported at 79  
Ohio St.3d 509, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration.  
Motion denied.  
Pfeifer, J., dissents.  
Cook, J., not participating.

96-1000. Kocel v. Farmers Ins. of Columbus, Inc.  
Cuyahoga App. No. 69058. Reported at 79 Ohio St.3d 1235, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Resnick and F.E. Sweeney, JJ., dissent.

96-1149. State v. Keith.  
Crawford App. No. 3-94-14. Reported at 79 Ohio St.3d 514, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-1273. State v. Warner.  
Lorain App. No. 96CA006534. Reported at 80 Ohio St.3d 1408, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Lundberg Stratton, J., dissents.  
Douglas, J., not participating.

97-1322. State ex rel. Key v. Court of Common Pleas of Cuyahoga  
Cty.  
In Mandamus. Reported at 80 Ohio St.3d 1406, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

97-1389. McBroom v. Pub. Util. Comm.  
Franklin App. No. 96APE12-1784. Reported at 80 Ohio St.3d 1410,  
\_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-1429. State ex rel. Rhodes v. Ohio Bd. of Tax Appeals.  
In Mandamus. Reported at 80 Ohio St.3d 1406, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

97-1472. First Natl. Bank of Southwestern Ohio v. Miami Univ.  
Butler App. Nos. CA96-03-047 and CA96-03-048. Reported at 80  
Ohio St.3d 1411, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration.  
Motion denied.  
Moyer, C.J., dissents.

97-1799. Marlowe v. Russell.  
In Habeas Corpus. Reported at 80 Ohio St.3d 1408, \_\_\_ N.E.2d  
\_\_\_. On motion for reconsideration. Motion denied.