

## SUPREME COURT OF OHIO

## COLUMBUS

## ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

December 17, 1997

## MERIT DOCKET

97-2112. State ex rel. Griffin v. Howland.

In Mandamus. Sua sponte, cause dismissed.

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

97-2154. State ex rel. Collins v. Montgomery 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.

97-2213. State ex rel. Rees v. Cissell.

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.

97-2234. State ex rel. Parra v. Lucas Cty. Common Pleas Court.

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.

97-2236. State ex rel. Wray v. Erie Cty. Court of Common Pleas.

In Prohibition. 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.

97-2339. Brown v. Wilkinson.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2376. State ex rel. Redd v. Leonard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2421. Cannon v. Ohio Adult Parole Auth.

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

95-342. State v. Reimsnyder.

Erie App. No. E-93-71.

Resnick, J., participating.

97-1476. State v. Earle.

Lake App. No. 96-L-051.

97-1907. State v. Glasure.

Wayne App. No. 95CA0081.

97-1970. State v. Buchanan.

Summit App. No. 18187.

97-1971. Fortune v. Medina Cty. Bd. of Commrs.

Medina App. Nos. 2634-M, 2636-M, 2640-M and 2641-M.

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

97-1972. State v. Agee.

Montgomery App. No. 16660. Discretionary appeal denied.

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

On motion for admission pro hac vice of David Lambart.  
Motion granted.

97-1977. State v. Pryor.

Miami App. No. 96CA49.

97-1982. State v. Taylor.

Athens App. No. 97CA1.

97-1986. Pustai v. Pustai.

Cuyahoga App. No. 71194.

Lundberg Stratton, J., dissents.

97-2014. Kent v. Columbus.

Franklin App. No. 96APE12-1771.

97-2015. In re Wood.

Franklin App. No. 97APE01-77.

97-2017. Ishmael v. Dutch Hous., Inc.

Tuscarawas App. No. 96AP100084.

97-2022. McGee v. Goodyear Atomic Corp.

Pike App. No. 96CA576.

Lundberg Stratton, J., dissents.

97-2026. Triplett v. Triplett.  
Franklin App. No. 97APE02-147.

97-2031. Dornbirer v. Paul.  
Franklin App. No. 96APE11-1560.

97-2033. State v. Ceasor.  
Cuyahoga App. No. 71092.

97-2038. State v. Fischer.  
Summit App. No. 18204.

97-2040. State v. Bennett.  
Cuyahoga App. No. 71575.

97-2041. Jackson v. Univ. Hosp. of Cleveland.  
Cuyahoga App. No. 72185.

97-2045. State v. Johnson.  
Lorain App. No. 97CA006861.  
Douglas, J., not participating.

97-2047. Courtney v. Tranter.  
Franklin App. No. 97APE04-490.

97-2048. Fortune v. Medina Cty. Bd. of Commrs.  
Medina App. Nos. 2634-M, 2636-M, 2640-M and 2641-M.  
Douglas and Resnick, JJ., dissent.

97-2051. State v. Broome.  
Geauga App. No. 96-G-2021.

97-2052. State v. Yonkings.  
Lorain App. No. 96CA006555.  
Douglas, J., not participating.

97-2059. Soler v. Evans, St. Clair & Kelsey.  
Franklin App. No. 97APE04-485.

97-2062. Harsco Corp. v. Crane Carrier Co.  
Union App. No. 1-49-78.  
Moyer, C.J., dissents.

97-2063. State v. Miller.  
Cuyahoga App. Nos. 71267, 71268, 71269 and 71270.

97-2065. Baker v. Frambach.  
Medina App. No. 2642-M.

97-2066. Sutherland v. ITT Residential Capital Corp.  
Ottawa App. No. OT-96-042.  
Resnick, J., dissents.

97-2070. State v. McShan.  
Cuyahoga App. No. 71139.

97-2072. State v. Buhrman.  
Greene App. No. 96CA145.

97-2073. State v. Rayburn.  
Gallia App. No. 97CA03.

97-2078. State v. Connor.  
Cuyahoga App. No. 71576.

97-2079. Plas v. Carlisle Twp. Bd. of Trustees.  
Lorain App. No. 96CA006428.

97-2084. State v. Moreland.  
Franklin App. No. 97APA01-109.

97-2086. State v. Edwards.  
Cuyahoga App. No. 70467.

97-2088. Risley v. O'Brien.  
Stark App. No. 1996CA00416.

97-2089. State v. Brown.  
Hamilton App. No. C-960948.

97-2090. Ode v. Luedtke Eng. Co.  
Cuyahoga App. No. 71473. Discretionary appeal denied and motion  
for admission pro hac vice of Steven B. Belgrade denied.

97-2091. Levi v. Levi.  
Licking App. No. 97CA22.

97-2096. State v. Bynum.  
Summit App. No. 17982.

97-2103. State v. Parker.  
Cuyahoga App. No. 71034.

97-2104. State v. Galloway.  
Lucas App. No. L-90-056.  
Resnick, J., not participating.

97-2111. State v. Byarse.  
Cuyahoga App. No. 70282.

97-2116. State v. Ballard.  
Montgomery App. No. 16174.

97-2122. State v. Benner.  
Summit App. No. 18094.  
Lundberg Stratton, J., dissents.

97-2126. State v. Cooper.  
Lucas App. No. L-96-280.

97-2128. State v. Ballard.  
Montgomery App. No. 16174.

97-2129. State v. Fowler.  
Tuscarawas App. No. 96AP110088.

97-2133. State v. Ross.  
Montgomery App. No. 16135.  
Moyer, C.J., dissents.

97-2134. State v. Tipple.  
Belmont App. Nos. 92-B-33 and 92-B-34.

97-2135. State v. Korecky.  
Franklin App. No. 95APA09-1154.

97-2137. State v. Hartbarger.  
Montgomery App. No. 16373.

97-2145. State v. Blake.  
Cuyahoga App. No. 68348.

97-2161. State v. Giles.  
Hamilton App. No. C-970662.

97-2170. State v. Woods.  
Hamilton App. No. C-950954.  
Douglas, J., dissents.

97-2187. State v. Robinson.  
Butler App. No. CA97-04-093.

97-2208. Rust v. Sidle.  
Lucas App. No. L-97-1167.  
Resnick, J., not participating.

97-2220. Ottawa Cty. Commrs. v. Seckler.  
Ottawa App. No. OT-97-002.  
Douglas, J., dissents.  
Moyer, C.J., and Resnick, J., not participating.

97-2235. State v. Flagner.  
Cuyahoga App. No. 72884.

#### MOTION DOCKET

95-1421. State ex rel. Nicholls v. Indus. Comm.  
In Mandamus. On request for oral argument. Request denied.  
Douglas and F.E. Sweeney, JJ., dissent.

97-1214. Burger Iron Co. v. Tracy.  
Board of Tax Appeals, Nos. 95-M-1078 and 96-M-48. On request  
for argument before full court. Request granted.

97-1554. State v. Waddy.  
Franklin App. No. 96APA07-863. On motion for stay of execution  
pending disposition of petition for certiorari in the United  
States Supreme Court. Motion denied.  
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

97-1906. State ex rel. Melnyk v. Penfield Twp. Bd. of Trustees. In Mandamus. This cause is before the court upon (1) respondents' motion to treat their answer as a responsive pleading to relator's amended complaint and (2) a determination under S.Ct.Prac.R. X(5). Upon consideration,

IT IS ORDERED by the court that respondents' motion to treat their answer as a responsive pleading to relator's amended complaint be granted.

IT IS FURTHER ORDERED that relator's claim under Section 1983, Title 42, U.S. Code be dismissed and that an alternative writ of mandamus be granted on relator's remaining claims.

97-2064. State ex rel. Foley v. Valcan Mfg. Co. In Mandamus. Sua sponte, alternative writ granted.

97-2204. State v. Baston. Lucas App. No. L-95-087. On motion to enlarge time for filing record. Motion granted and record ordered filed.

97-2274. State v. Nagel. Lucas App. No. L-95-382. 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' Decision and Judgment Entry filed October 17, 1997, at page 2:

"Upon due consideration, we hereby find that our judgment in the above-referenced case conflicts with the judgments pronounced in State v. Farris (1991), 71 Ohio App.3d 817, 821 [595 N.E.2d 453, 456], and State v. Kidd (Apr. 24, 1986), Cuyahoga App. No. 47510, unreported, on the issue of whether the requirements of R.C. 2945.05 are applicable to the specification waiver. Finding that our judgment is in conflict with the judgments of other appellate court[s] in Ohio, the state of Ohio's motion to certify the record is granted."

Pfeifer and Cook, JJ., dissent.

Resnick, J., not participating.

Sua sponte, cause consolidated with 97-2120, infra.

Pfeifer and Cook, JJ., dissent.

Resnick, J., not participating.

97-2358. State v. Bruce. Cuyahoga App. No. 70982. On motion for leave to file delayed appeal. Motion denied.

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

97-2367. State v. Davis. Delaware App. No. 96CAA11056. On motion for leave to file delayed appeal. Motion granted.

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

97-2394. Workman v. Warden. In Habeas Corpus. Sua sponte, writ allowed. Respondent is ordered to file a return of writ within thirty days of service of petition, and relator shall file a response within twenty days after the return.

Resnick, J., dissents and would dismiss the cause.

97-2398. Cuyahoga Child Support Enforcement Agency v. Guthrie. Cuyahoga App. No. 72216. 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' Journal Entry filed October 24, 1997:

"Upon the motion of the Cuyahoga Child Support Enforcement Agency, this court finds that our decision in this case is in conflict with the decision of the Hamilton County Court of Appeals in Gosink v. Hamm (1996), 111 Ohio App.3d 495 [676 N.E.2d 604] on the following issue:

"When a motion for relief from a judgment of paternity is based on the results of genetic testing, can such motion be brought under Civ.R. 60(B)(4), which provides for relief when the continued application of the judgment would be inequitable or must the motion be reviewed under \*\*\* Civ.R. 60(B)(2), which provides for relief based upon newly discovered evidence?"

Pfeifer, J., dissents.

97-2424. State v. Sprau.

Huron App. No. H-97-013. On motion for leave to exceed page limitation and on motion for leave to include prohibited documents as appendix. Motions denied.

Resnick, J., not participating.

#### DISCRETIONARY APPEALS ALLOWED

97-2039. E. Canton Edn. Assn. v. McIntosh.

Stark App. No. 96CA0293. (Appeal of East Canton Education Association and appeal of Osnaburg Local School District Board of Education et al.) Discretionary appeals allowed and motion to dismiss denied.

Lundberg Stratton, J., dissents.

97-2120. State v. Nagel.

Lucas App. No. L-95-382. Discretionary appeal allowed; sua sponte, cause consolidated with 97-2274, supra.

Pfeifer, J., dissents.

Resnick, J., not participating.

#### DISCRETIONARY APPEALS NOT ALLOWED

97-1973. Rust v. Sidle.

Lucas App. No. L-97-1167.

Resnick, J., not participating.

97-1978. Bratton v. E. Ohio Gas Co.

Summit App. No. 18137.

97-1979. Bratton v. Adkins.

Summit App. No. 18136.

97-2002. Northcutt v. Grilliot.

Darke App. No. 97CA1433.

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

97-2009. Braatz v. Braatz.

Mahoning App. No. 95 C.A. 260.

97-2011. Crow v. Estate of Parker.  
Allen App. No. 1-96-88.  
Lundberg Stratton, J., dissents.

97-2023. State v. Hamm.  
Richland App. No. 96CA632.

97-2024. Haney v. Warnder.  
Tuscarawas App. No. 96AP080066.

97-2025. Sangster v. Dunn.  
Cuyahoga App. No. 71617.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

97-2032. Hastell v. Hastell.  
Montgomery App. No. 16194.

97-2043. Hensley v. Rini-Rego Stop-N-Shop.  
Cuyahoga App. No. 71552.

97-2049. Greene v. Condrad.  
Franklin App. No. 96APE12-1780.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-2053. Swan v. Toledo Area Regional Transit Auth.  
Lucas App. No. L-96-340.  
Douglas, J., would allow on Proposition of Law No. II only.  
Pfeifer, J., would allow.  
Resnick, J., not participating.

97-2057. Allen v. Lawrence.  
Franklin App. No. 96APE10-1358.  
Moyer, C.J., and F.E. Sweeney, J., dissent.

97-2060. State v. Ward.  
Cuyahoga App. Nos. 68848 and 70894.

97-2067. Lowe v. Fiorini.  
Perry App. No. CA9638.  
F.E. Sweeney and Lundberg Stratton, JJ., dissent.

97-2068. Sanderson v. Salling.  
Hamilton App. No. C-960679.  
Pfeifer and Lundberg Stratton, JJ., dissent.

97-2069. John Deere Ins. Co. v. Ricker.  
Franklin App. No. 96APE10-1426.

97-2083. Multi-Care Serv., Inc. v. Scidem, Inc.  
Cuyahoga App. No. 72442.  
Lundberg Stratton, J., dissents.

97-2094. Local No. 74, Am. Fedn. of State, Cty., & Mun. Emp. v.  
Warren Bd. of Health.  
Trumbull App. No. 95-T-5365.  
Douglas and F.E. Sweeney, JJ., dissent.

RECONSIDERATION DOCKET

96-1006. Freedom Rd. Found. v. Ohio Dept. of Liquor Control.  
Franklin App. No. 95APE08-1030. Reported at 80 Ohio St.3d 202,  
\_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

97-1600. Roberts v. Carson.  
Perry App. No. 96CA36. Reported at 80 Ohio St.3d 1431, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Douglas and Lundberg Stratton, JJ., dissent.

97-1656. Williams v. Flanigan.  
Guernsey App. No. 96CA21. Reported at 80 Ohio St.3d 1432, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Douglas, J., would grant reconsideration on Proposition of  
Law No. I only.  
F.E. Sweeney and Pfeifer, JJ., would grant reconsideration.

97-1671. Wyant v. Marble.  
Hamilton App. No. C-960655. Reported at 80 Ohio St.3d 1433, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-1771. Garrett v. Consol. Rail Corp.  
Union App. No. 14-96-24. Reported at 80 Ohio St.3d 1444, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration, amicus curiae motion  
of Association of American Railroads for leave to file under  
S.Ct.Prac.R. XI, and amicus curiae motion of Ohio Alliance for  
Civil Justice for leave to file under S.Ct.Prac.R. XI. Motions  
denied.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-1772. Gollihue v. Consol. Rail Corp.  
Union App. No. 14-96-23. Reported at 80 Ohio St.3d 1444, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration and amicus curiae  
motion of Association of American Railroads for leave to file  
under S.Ct.Prac.R. XI. Motions denied.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.  
On motion to strike. Motion denied.

97-1870. Burger v. Cleveland Hts.  
Cuyahoga App. No. 72675. Reported at 80 Ohio St.3d 1449, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration, amicus curiae motion  
of Cuyahoga County Law Directors Association for leave to file  
under S.Ct.Prac.R. XI, and amicus curiae motion of County  
Commissioners Association of Ohio for leave to file under  
S.Ct.Prac.R. XI. Motions granted and discretionary appeal  
allowed.  
F.E. Sweeney and Pfeifer, JJ., dissent.

97-1918. State v. Luoma.  
Montgomery App. No. 16338. Reported at 80 Ohio St.3d 1447, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-1934. State ex rel. Bates v. Tenth Appellate Dist.  
In Mandamus. Reported at 80 Ohio St.3d 1443, \_\_\_ N.E.2d \_\_\_.

On motion for reconsideration. Motion denied.