

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
March 3, 1999

MERIT DOCKET

98-2671. State ex rel. Wilberger v. Cleary.

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.

98-2678. State ex rel. Harman v. Cox.

In Mandamus. On motion to dismiss of Judge Edward A. Cox. Motion to dismiss sustained. Cause dismissed.

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

Cook, J., dissents and would grant a peremptory writ.

98-2708. State ex rel. Edwards v. Anderson.

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.

99-22. State ex rel. McClain v. Cuyahoga Cty. Court of Appeals.

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.

99-37. Fugett v. Mack.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

99-128. Blackwell v. Anderson.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

99-161. State ex rel. McCoy v. Judges of the Court of Appeals, Eleventh Dist.

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.

99-201. State ex rel. Fraley v. Haskins.

In Habeas Corpus. *Sua sponte*, casue 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**

98-670. State v. Chappell.

Franklin App. Nos. 97APA04-543 and 97APA05-636.

Moyer, C.J., would allow on Propositions of Law Nos. III, IV, and V.

Douglas, J., dissents.

98-691. State v. Burgoon.

Franklin App. No. 97APA07-951.

Moyer, C.J., would allow on Propositions of Law Nos. III, IV, and V and consolidate this cause with 98-670, *supra*.

Douglas, J., would allow and consolidate this cause with 98-670, *supra*.

98-2341. Hooks v. Owen.

Mahoning App. No. 95 C.A. 224. On discretionary appeal and on motion for stay of jurisdictional decision pending execution of proposed settlement agreement. Appeal and motion denied.

Pfeifer, J., dissents.

Lundberg Stratton, J., would hold this cause in abeyance for sixty days pending settlement.

98-2382. Automated Tracking Sys., Inc. v. Great Am. Ins. Co.

Summit App. No. 18906.

Lundberg Stratton, J., dissents.

98-2472. State v. Williams.

Hamilton App. No. C-971058.

98-2474. Burns v. Price Waterhouse.

Cuyahoga App. No. 72927. On discretionary appeal and on motion for admission *pro hac vice* of Scott A. Fink. Appeal and motion denied.

Douglas and Pfeifer, JJ., dissent.

98-2485. Calhoun v. Lombardo.

Summit App. No. 18951.

98-2490. Early v. The Toledo Blade.

Lucas App. No. L-97-1286.

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

Resnick, J., not participating.

98-2498. State v. Ferguson.

Franklin App. No. 98AP-21.

Douglas, J., dissents.

98-2499. T. Carroll Ent., Inc. v. Hammitt.

Lucas App. No. L-98-1113.

Resnick, J., not participating.

98-2502. State v. Napier.

Warren App. No. CA98-04-048.

Moyer, C.J., dissents.

98-2505. Offsite, Inc. v. Osborne.

Lake App. No. 98-L-076.

Lundberg Stratton, J., dissents.

98-2506. Kinney v. Ohioagro, Inc.

Delaware App. No. 98CAE03017.

F.E. Sweeney, J., dissents.

98-2511. State v. Mathews.

Cuyahoga App. No. 73303.

98-2512. State v. Williamson.

Cuyahoga App. Nos. 73130 and 73132.

Douglas, Pfeifer and Lundberg Stratton, JJ., dissent.

98-2514. State v. Kasley.

Hamilton App. No. C-970486.

Pfeifer, J., dissents.

98-2517. State v. Smith.

Hamilton App. No. C-970349.

98-2518. State v. Crum.

Stark App. No. 97CA0134.

98-2522. State v. Grier.

Richland App. No. 98CA34.

98-2523. State v. O'Neal.

Cuyahoga App. No. 72662.

Pfeifer, J., dissents.

98-2524. State v. Thigpen.

Stark App. Nos. 1997CA00284 and 1997CA00330.

98-2525. Ting v. Good Samaritan Med. Ctr.

Fairfield App. No. 98CA00009.

Moyer, C.J., dissents.

98-2533. State v. Potter.

Montgomery App. No. 16928.

98-2536. In re Jasper.

Butler App. No. CA98-01-002.

98-2537. State v. Williams.

Trumbull App. No. 97-T-0153.

Lundberg Stratton, J., would allow on Proposition of Law No. I.

Douglas and Pfeifer, JJ., would allow.

98-2538. State v. Keith.

Cuyahoga App. No. 72275.

98-2553. State v. Leighliter.

Ashland App. No. 98COA01265.

98-2562. Maple Hts. v. Goad.

Cuyahoga App. No. 73274.

98-2563. State v. Street.

Hancock App. No. 5-98-15.

Moyer, C.J., dissents.

98-2564. Carroll v. Stone Container Corp.

Richland App. No. 98CA212.

Douglas and Pfeifer, JJ., dissent.

98-2565. McBroom v. Bob-Boyd Lincoln Mercury, Inc.

Franklin App. Nos. 98AP-229 and 98AP-230.

98-2567. Hormann v. Cleveland Bd. of Edn.

Cuyahoga App. No. 71165.

Resnick and Pfeifer, JJ., dissent.

98-2568. Gaul v. Ohio Dept. of Rehab. & Corr.

Muskingum App. No. CT980007.

98-2569. Lesiak v. Ohio Bur. of Emp. Serv.

Cuyahoga App. No. 73476.

Moyer, C.J., dissents.

98-2573. Sohi v. Ohio State Dental Bd.

Hamilton App. No. C-970739.

98-2575. State v. Goetz.

Hamilton App. No. C-970503.

98-2583. Whiting v. Aerni.

Cuyahoga App. No. 73323.

Pfeifer, J., dissents.

98-2632. Texler v. Casa Di Borally.

Cuyahoga App. No. 73443.

98-2675. State v. Webster.

Mahoning App. No. 98 C.A. 195.

99-9. State v. Lewis.

Franklin App. No. 97APA09-1263.

99-16. State v. Coffman.

Delaware App. No. 97CAA11050.

Lundberg Stratton, J., dissents.

99-92. State v. Prichard.

Hamilton App. No. C-941011. On appeal and motion for admission *pro hac vice* of Brenda Poplewell. Appeal and motion denied.

99-105. State v. Dukes.

Hamilton App. No. C-930668.

MOTION DOCKET

96-536. State v. Henness.

Franklin App. No. 94APA02-240. On motion to set execution date. Motion granted and date set sixty days from the date of this order.

96-2790. State v. Clemons.

Hamilton C.P. No. B9511119. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

Pfeifer and Cook, JJ., dissent.

96-2872. State v. Raglin.

Hamilton C.P. No. B96000135. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

97-98. State v. Madrigal.

Lucas C.P. No. CR965761. On motion to disqualify Jeffrey M. Gamso as appellant's counsel of record. Motion denied.

97-141. State v. Raglin.

Hamilton App. No. C-970009. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

98-837. State ex rel. Dist. 1199, Health Care & Social Serv. Union, SEIU, AFL/CIO v. Lawrence Cty. Gen. Hosp.

In Mandamus. On relators' bill and supplemental submission in support of attorney fees. Relators are awarded \$2,716 in attorney fees and a refund of costs of \$140.

98-1714. State ex rel. LTV Steel Co. v. Indus. Comm.

Franklin App. No. 97APD06-859. On motion to strike pages 29-33 of exhibit A of appellant's supplement to briefs. Motion denied.

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

98-1879. Agley v. Tracy.

Board of Tax Appeals, No. 96-R-302. *Sua sponte*, cause consolidated with 98-1880 and 98-1881, *infra*.

98-1880. Agley v. Tracy.

Board of Tax Appeals, No. 96-R-301. *Sua sponte*, cause consolidated with 98-1879, *supra*, and 98-1881, *infra*.

98-1881. Timmis v. Tracy.

Board of Tax Appeals, No. 96-R-303. *Sua sponte*, cause consolidated with 98-1879 and 98-1880, *supra*.

98-2295. State ex rel. Taxpayers Coalition v. Lakewood.

In Mandamus. On answer of respondent. *Sua sponte*, alternative writ granted, oral argument denied, and the respondents are ordered to submit under seal unredacted copies of any of the requested records that they claim are exempt from disclosure.

99-23. State v. Fontes.

Union App. No. 14-97-45. 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 December 7, 1998:

“Upon consideration of appellant’s motion to certify a conflict under Article IV, Section 3(B)(4) of the Ohio Constitution, the judges of this court find that the judgment in this case is in conflict with the judgments pronounced upon the same question by the Fourth District Court of Appeals in *State v. Waszily* (1995), 105 Ohio App.3d 510 [664 N.E.2d 600]; the Eighth District Court of Appeals in *State v. Lewis* (1992), 78 Ohio App.3d 518 [605 N.E.2d 451]; and the Tenth District Court of Appeals in *State v. Flowers* (1984), 16 Ohio App.3d 313 [16 OBR 344, 475 N.E.2d 790].

“The issue upon which the conflict exists: Pursuant to R.C. 2911.11(A), must the purpose to commit a criminal offense be formed at or before the time of trespass in an occupied structure or may it evolve during the course of the trespass?”

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

99-42. Burger Realty, Inc. v. Newton.

In Mandamus. On answer of respondent. *Sua sponte*, alternative writ granted and oral argument denied.

99-59. State v. Jones.

Franklin App. No. 98AP-129. On motion for leave to file delayed appeal. Motion denied.

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

99-79. Springs v. Donofrio.

In Procedendo. On motion to dismiss. *Sua sponte*, alternative writ granted.

Douglas, Resnick and F.E. Sweeney, JJ., dissent and would dismiss the cause.

99-107. State v. Swalcy.

Portage App. No. 97-P-0075. On motion for stay of court of appeals' judgment. Motion granted.

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

On motion for bail. Motion denied.

F.E. Sweeney, J., would set bail at \$50,000.

Cook, J., would continue bail at \$5,000.

99-124. State v. Barbato.

Stark App. No. 1998CA0260. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

99-138. State v. Murray.

Clark App. No. 98CA21. On motion for leave to file delayed appeal. Motion denied.

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

99-149. State v. Schnuck.

Fairfield App. No. 95CA67. On motion for leave to file delayed appeal. Motion denied.

99-169. State v. Justice.

Fairfield App. No. 37CA91. On motion for leave to file delayed appeal. Motion denied.

99-258. Becker v. McAninch.

Ross App. No. 98CA2450. On motion for temporary restraining order. Motion denied.

99-285. RJK Partnership v. Wesley.

Adams App. No. 98CA664. On motion for stay of the court of appeals' decision. Motion denied.

DISCRETIONARY APPEALS ALLOWED

98-2481. Leisure v. State Farm Mut. Auto. Ins. Co.

Stark App. Nos. 1997CA00420 and 1997CA00445. (Appeal of Annette E. Leisure and cross-appeal of State Farm Mutual Automobile Insurance Company.) Discretionary appeal and cross-appeal allowed; *sua sponte*, this cause shall be argued on the same date as 98-2110, *Leisure v. State Farm Auto. Ins. Co.*, Stark App. Nos. 1997CA00417 and 1998CA00001 with the time for oral argument to be shared equally.

Moyer, C.J., dissents.

98-2527. Brown v. Guarantee Title & Trust/ARTA.

Fairfield App. No. 98CA10.

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

98-2572. Home Builders Assn. of Dayton & the Miami Valley v. Beavercreek.

Greene App. Nos. 97CA113 and 97CA115.

Resnick, Pfeifer and Cook, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

98-2504. Conley v. Brown Cty. Rural Water Assn., Inc.

Brown App. No. CA98-04-015.

Douglas, J., dissents.

98-2535. State ex rel. Haught v. Monroe Cty. Bd. of Edn.

Monroe App. No. 784.

Pfeifer, J., dissents.

98-2551. McMeans v. Ohio Adult Parole Auth.

Franklin App. No. 98AP-42.

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

98-2555. Rodgers v. Ohio Liquor Control Comm.

Richland App. No. 98CA392.

Douglas, J., dissents.

98-2560. W. Am. Ins. Co. v. Holman.

Sandusky App. No. S-98-016.

Douglas and Cook, JJ., dissent.

98-2587. State v. Zanders.

Summit App. No. 19332.

98-2593. Coshocton Cty. Dept. of Human Serv. v. Cutshall.

Coshocton App. No. 97CA36.

98-2634. Master v. Chalko.

Cuyahoga App. No. 75553.

98-2647. Ogburn v. Ohio Bur. of Emp. Serv.

Mahoning App. No. 97 C.A. 242.

98-2706. State v. Fontes.

Union App. No. 14-97-45.

Pfeifer, J., dissents.

RECONSIDERATION DOCKET

97-1187. State v. Goodwin.

Cuyahoga App. No. 68531. Reported at 84 Ohio St.3d 331, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

97-2118. Case W. Res. Univ. v. Tracy.

Board of Tax Appeals, No. 95-K-1280. Reported at 84 Ohio St.3d 316, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

98-1978. State v. Wortham.

Lucas App. No. L-98-1063. Reported at 84 Ohio St.3d 1468, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

98-2040. Rinicella v. Rubino.

Cuyahoga App. No. 73105. Reported at 84 Ohio St.3d 1474, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

98-2078. A. Doe v. First Presbyterian Church (USA).

Richland App. No. 97CA482. Reported at 84 Ohio St.3d 1486, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas and Lundberg Stratton, JJ., dissent.

98-2108. Prudential Ins. Co. of Am. v. Robinson.

Stark App. No. 1998CA0150. Reported at 84 Ohio St.3d 1474, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2113. State v. Bonnell.

Cuyahoga App. Nos. 69835 and 73177. Reported at 84 Ohio St.3d 1469, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2151. State v. Smith.

Butler App. No. CA97-12-223. Reported at 84 Ohio St.3d 1469, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2255. State v. Sherrills.

Cuyahoga App. No. 53535. Reported at 84 Ohio St.3d 1471, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2256. State v. Sherrills.

Cuyahoga App. No. 61882. Reported at 84 Ohio St.3d 1471, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2258. State v. Sherrills.

Cuyahoga App. No. 35912. Reported at 84 Ohio St.3d 1471, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2259. State v. Sherrills.

Cuyahoga App. No. 62067. Reported at 84 Ohio St.3d 1471, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2260. State v. Sherrills.

Cuyahoga App. No. 62068. Reported at 84 Ohio St.3d 1471, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2307. Westerfield v. Metro. Ins. Co.

Cuyahoga App. No. 73356. Reported at 84 Ohio St.3d 1475, ___ N.E.2d ___. On motion for reconsideration. Motion granted and discretionary appeal allowed.

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

98-2332. State v. Davie.

Trumbull App. No. 97-T-175. Reported at 84 Ohio St.3d 1483, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.