

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 27, 2004

MERIT DECISIONS WITH OPINIONS

2003-0929. State v. Martin, 2004-Ohio-5471.

Cuyahoga App. No. 80198, 2003-Ohio-1499. Judgment affirmed.

Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

Moyer, C.J., concurs in judgment only.

2003-2034. Cincinnati Gas & Elec. Co. v. Pub. Util. Comm., 2004-Ohio-5466.

Public Utilities Commission, No. 02-2906-EL-ATA. Appeal dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

Pfeifer, J., dissents.

2004-0069. Cincinnati Bar Assn. v. Witt, 2004-Ohio-5463.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-003. Jeffrey A. Witt, Attorney Registration No. 0066274, is suspended from the practice of law for six months, stayed on conditions.

Moyer, C.J., Resnick, F.E. Sweeney, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

Pfeifer, J., dissents and would suspend respondent for six months.

2004-0495. Disciplinary Counsel v. King, 2004-Ohio-5470.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-036. James C. King, Attorney Registration No. 0000774, is suspended from the practice of law for two years, with the second year stayed.

Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Donnell, JJ., concur.

Moyer, C.J., and O'Connor, J., dissent.

2004-0718. State ex rel. Ullman v. Hayes, 2004-Ohio-5469.

Franklin App. No. 03AP-299, 2004-Ohio-1275. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0824. Disciplinary Counsel v. Pace, 2004-Ohio-5465.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-067. Don Haywood Pace, Attorney Registration No. 0025708, is suspended from the practice of law for two years, with credit for suspension time served.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0922. Hardy v. McFaul, 2004-Ohio-5467.

Cuyahoga App. No. 84495, 2004-Ohio-2694. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

MERIT DECISIONS WITHOUT OPINIONS

2004-1376. State ex rel. Tate v. Gwin.

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

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-1583. State ex rel. Aaron-El v. Bobby.

In Habeas Corpus. On petition for writ of habeas corpus. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

MOTION AND PROCEDURAL RULINGS

2001-0253. State v. Bryan.

Cuyahoga C.P. No. CR-393-660. On application for reopening under S.Ct.Prac.R. XI(6). Motion denied because the appellant failed to comply with the 90-day filing deadline in S.Ct.Prac.R. XI(6)(A).

2004-1452. State ex rel. Qualls v. Story.

Meigs App. No. 04CA4. On motion to dismiss. Motion denied.

2004-1480. State v. Razo.

Lorain App. No. 03CA008263, 2004-Ohio-3405. On motion for leave to file delayed appeal. Motion granted.

O'Connor and O'Donnell, JJ., dissent.

2004-1491. State v. Brewster.

Hamilton App. Nos. C-030024 and C-030025, 2004-Ohio-2993. On motion for leave to file delayed appeal. Motion denied.

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

2004-1507. Cuyahoga Falls v. Szakal.

Summit App. No. 22117. On motion for stay of court of appeals' judgment. Motion denied.

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

2004-1518. State v. Humphrey.

Clark App. No. 2002 CA 30, 2003-Ohio-3401. On motion for leave to file delayed appeal. Motion denied.

2004-1519. State v. Gordon.

Franklin App. No. 03AP-281, 2004-Ohio-2644. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1525. State v. Zucco.

Cuyahoga App. No. 83602, 2004-Ohio-4095. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., Resnick and O'Connor, JJ., dissent.

2004-1528. State v. Wilson.

Franklin App. No. 03AP-592, 2004-Ohio-2838. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1575. State v. Jackson.

Clark App. No. 02-CA0039, 2004-Ohio-165. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Connor, JJ., dissent.

2004-1577. State v. Watson.

Cuyahoga App. No. 82582, 2003-Ohio-5815. On motion for leave to file delayed appeal. Motion denied.

2004-1578. State v. Hecker.

Cuyahoga App. No. 83815, 2004-Ohio-3878. On motion for leave to file delayed appeal. Motion granted.

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

2004-1579. State v. Dixon.

Richland App. No. 03 CA 75, 2004-Ohio-3940. On motion for leave to file delayed appeal. Motion granted.

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

2004-1595. Peters v. Allison.

Sandusky App. No. S-03-044, 2004-Ohio-4143. On motion for stay of court of appeals' judgment. Motion denied.

2004-1617. Humbert v. Borkowski.

Fulton App. No. F-04-022, 2004-Ohio-4275. On motion for stay of court of appeals' judgment. Motion denied.

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

2004-1630. Non-Employees of Chateau Estates Resident Assn. v. Chateau Estates, Ltd.

Clark App. Nos. 2004CA19 and 2004CA20, 2004-Ohio-3781. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2004-1186. State v. Olson.

Stark App. No. 2003-CA-00371, 2004-Ohio-2965. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

2004-1187. State v. Glosser.

Stark App. No. 2003-CA-00374, 2004-Ohio-2966. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

2004-1188. State v. Cantwell.

Stark App. No. 2003-CA-00367, 2004-Ohio-2964. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

2004-1198. Village Condominium Owners Assn. v. Montgomery Cty. Bd. of Revision.

Montgomery App. No. 20082, 2004-Ohio-3087.

O'Connor, J., dissents.

2004-1239. Coleman v. Dogra.

Cuyahoga App. No. 83522, 157 Ohio App.3d 530, 2004-Ohio-3109.

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

2004-1267. State v. Fair.

Cuyahoga App. No. 82278, 2004-Ohio-2971. Discretionary appeal accepted and cause consolidated with 2004-1171, *State v. Mathis*, Cuyahoga App. No. 83311, 2004-Ohio-2982, for argument and decision.

F.E. Sweeney, Pfeifer and O'Connor, JJ., dissent.

2004-1274. State v. Massey.

Stark App. No. 2003-CA-00373, 2004-Ohio-3257. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

Pfeifer, J., dissents.

2004-1275. State v. Owens.

Stark App. No. 2003-CA-00370, 2004-Ohio-3262. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

Pfeifer, J., dissents.

2004-1293. Smith v. Smith.

Hancock App. No. 5-03-12, 2004-Ohio-3552.

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

2004-1320. State v. Williams.

Stark App. No. 2003-CA-00369, 2004-Ohio-3525. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

2004-1324. State v. Carter.

Stark App. No. 2003-CA-00372, 2004-Ohio-3523. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

APPEALS NOT ACCEPTED FOR REVIEW

2004-0831. State v. Simmons.

Montgomery App. No. 19609, 2004-Ohio-1174.

2004-0896. State v. Shadoan.

Adams App. No. 03CA764, 2004-Ohio-1756.

2004-0961. State v. Marcum.

Columbiana App. No. 03 CO 36, 2004-Ohio-3036.

2004-1003. Jordan v. Dayton Testing Laboratory, Inc.

Montgomery App. No. 19741, 2004-Ohio-2425. Discretionary appeal and cross-appeal denied.

2004-1046. State v. Wade.

Franklin App. No. 04AP-549.

2004-1134. Hamilton v. Union Carbide Corp.

Cuyahoga App. No. 84552.

2004-1155. State v. Budreaux.

Cuyahoga App. No. 83219, 2004-Ohio-2544.

2004-1156. State v. Rivers.

Cuyahoga App. No. 83321, 2004-Ohio-2566.

2004-1157. Condello v. Raiffe.

Cuyahoga App. Nos. 83076 and 83556, 2004-Ohio-2554.

2004-1159. Roberts v. Performance Site Mgt., Inc.

Franklin App. No. 03AP-784, 2004-Ohio-2820.

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

2004-1161. State v. Ross.

Montgomery App. No. 20031, 2004-Ohio-3093.

2004-1162. State v. Harris.

Franklin App. No. 04AP-390.

2004-1167. State v. Todd.

Brown App. Nos. CA2003-01-001 and CA2003-03-006, 2004-Ohio-2902.

2004-1170. Frigo v. Steiner.

Richland App. No. 03-CA-111, 2004-Ohio-3056.

2004-1172. Oliver v. CMHA Section 8.

Cuyahoga App. No. 84518.

O'Donnell, J., dissents.

2004-1175. Humbert v. Borkowski.

Fulton App. No. F-04-012, 2004-Ohio-4275. Discretionary appeal not accepted and motions to strike and motion for sanctions dismissed as moot.

2004-1177. State v. Martin.

Trumbull App. No. 2002-T-0111, 2004-Ohio-3190 and 2004-Ohio-3330.

2004-1178. Gottlieb v. S. Euclid.

Cuyahoga App. No. 83399, 157 Ohio App.3d 250, 2004-Ohio-2705.

2004-1179. Clark v. Clark.

Portage App. No. 2003-P-0119, 2004-Ohio-2929.

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

2004-1183. State v. White.

Cuyahoga App. No. 83562, 2004-Ohio-2702.

2004-1185. State v. Jennings.

Warren App. No. CA2003-09-087.

2004-1193. State v. Fairrow.

Ross App. Nos. 02CA2668 and 02CA2680, 2004-Ohio-3145.

2004-1195. Weaver v. Cleveland.

Cuyahoga App. No. 83398, 2004-Ohio-2703.

Moyer, C.J., Lundberg Stratton and O'Donnell, JJ., dissent.

2004-1201. State v. Blevins.

Hamilton App. No. C-030576.

2004-1205. State v. Parker.

Cuyahoga App. No. 82687, 2004-Ohio-2976.

2004-1214. Turchyn v. Nakonachny.

Cuyahoga App. No. 83557, 157 Ohio App.3d 284, 2004-Ohio-2692.

2004-1215. Dixon v. Cloverleaf Cold Storage Co.

Stark App. No. 2003CA00363.

F.E. Sweeney, J., dissents.

2004-1217. Miller v. Watkins.

Hamilton App. No. C-030065, 2004-Ohio-3132.

2004-1218. Koerber v. Levey & Gruhin.

Summit App. No. 21730, 2004-Ohio-3085.

F.E. Sweeney, Pfeifer and O'Connor, JJ., dissent.

2004-1222. Maynard v. Eaton Corp.

Marion App. No. 9-03-48, 2004-Ohio-3025.

O'Donnell, J., dissents and would accept on Proposition of Law No. 3.

2004-1223. Cicchini v. Galmish.

Stark App. No. 2003CA00121.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., would award attorneys' fees to appellee.

2004-1225. State v. Marbury.

Franklin App. No. 03AP-233, 2004-Ohio-3373.

2004-1226. Bicudo v. Lexford Properties, Inc.

Mahoning App. No. 03 MA 59, 2004-Ohio-3202.

Pfeifer, J., dissents.

2004-1228. State v. Peoples.

Miami App. No. 04CA12.

2004-1231. State v. Brooks.

Mahoning App. No. 02-CA-251, 2004-Ohio-3216.

Pfeifer and O'Connor, JJ., dissent.

2004-1232. State v. Bouyer.

Cuyahoga App. No. 83123, 2004-Ohio-2851.

Pfeifer and O'Connor, JJ., dissent.

2004-1233. Fryman-Kuck Gen. Contrs., Inc. v. Lebanon.

Warren App. No. CA2003-12-118.

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

2004-1240. Julian v. Creekside Health Center.

Mahoning App. No. 03 MA 21, 2004-Ohio-3197.

Lundberg Stratton, J., not participating.

2004-1245. State v. Amin.

Lucas App. No. L-03-1084, 2004-Ohio-886.

2004-1247. State v. Ristich.

Summit App. No. 21701, 2004-Ohio-3086.

2004-1248. Teague v. Cincinnati Ins. Co.

Mahoning App. No. 02 CA 232, 2004-Ohio-3212.

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

2004-1249. State v. Williams.

Montgomery App. No. 19854, 2004-Ohio-3135.

2004-1250. Huntsman v. State Bd. of Edn.

Stark App. No. 2003-CA-00249, 2004-Ohio-3258.

2004-1251. State ex rel. Felson v. McHenry.

Hamilton App. No. C-030658, 158 Ohio App.3d 81, 2004-Ohio-3622.
Moyer, C.J., dissents.

2004-1252. Quinones v. Botello.

Sandusky App. No. S-03-016, 2004-Ohio-3162.

2004-1254. State v. Nelson.

Cuyahoga App. No. 83553, 2004-Ohio-2849.

2004-1255. State v. Talley.

Cuyahoga App. No. 83237, 2004-Ohio-2846.

2004-1257. State v. McCoy.

Stark App. No. 2004-CA-00192.

2004-1266. State v. Snyder.

Mahoning App. No. 03 MA 152, 2004-Ohio-3366.

2004-1272. State v. Beckley.

Cuyahoga App. No. 83254, 2004-Ohio-2977.

2004-1276. State v. Hall.

Lake App. No. 2001-L-230, 2004-Ohio-3186.

Moyer, C.J., and Lundberg Stratton, J., dissent and would accept on Proposition of Law No. 4 and hold for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289.

2004-1281. State v. White.

Marion App. No. 9-98-52, 1999-Ohio-847.

O'Donnell, J., not participating.

2004-1282. State v. Ivory.

Cuyahoga App. No. 83170, 2004-Ohio-2968.

2004-1285. State v. Lemke.

Summit App. No. 15404.

2004-1289. Burns v. Rice.

Franklin App. No. 03AP-717, 2004-Ohio-3228.
Pfeifer, J., dissents.

2004-1296. State v. Zhao.

Lorain App. No. 03CA008386, 2004-Ohio-3245.

2004-1297. State v. McKinnon.

Columbiana App. No. 03 CO 36, 2004-Ohio 3359.

2004-1322. Heath v. Teich.

Franklin App. No. 03AP-1100, 2004-Ohio-3389.
Pfeifer and O'Connor, JJ., dissent.

2004-1328. State v. DeMastry.

Fairfield App. No. 02 CA 9, 155 Ohio App.3d 110, 2003-Ohio-5588.
Pfeifer, J., dissents.

2004-1335. Jenkins v. Jenkins.

Portage App. No. 2002-P-0121, 2004-Ohio-3332.

2004-1336. State v. Dixon.

Franklin App. No. 03AP-564, 2004-Ohio-3374.

2004-1346. Cincinnati ex rel. Radford v. Cincinnati.

Hamilton App. No. C-030749, 2004-Ohio-3501.
Resnick and Pfeifer, JJ., dissent.

2004-1349. State v. VFW Post 431.

Montgomery App. No. 19892, 2004-Ohio-3566.

2004-1350. State v. Meeds.

Miami App. No. 2003 CA 5, 2004-Ohio-3577.

2004-1362. State v. Warren.

Franklin App. No. 03AP-1079, 2004-Ohio-3379.

2004-1363. State v. Tucker.

Hamilton App. No. C-020821, 2003-Ohio-6056.

2004-1397. State v. Alexander.

Cuyahoga App. No. 81529, 151 Ohio App.3d 590, 2003-Ohio-760 and 2004-Ohio-3861.

2004-1400. Poulos v. State Auto Ins. Co.

Hamilton App. No. C-040303.

2004-1420. State v. Newrones.

Portage App. No. 2003-P-0095, 2004-Ohio-3685.
Pfeifer, J., dissents.

2004-1467. In re Brooks.

Franklin App. Nos. 04AP-164, 04AP-165, 04AP-201 and 04AP-202, 2004-Ohio-3887.

Moyer, C.J., Pfeifer and O'Donnell, JJ., dissent.

2004-1527. In re Burton.

Mercer App. No. 10-04-01, 2004-Ohio-4021.

2004-1546. In re Brown.

Franklin App. Nos. 04AP-169, 04AP-170, 04AP-180 and 04AP-181, 2004-Ohio-4044.

O'Donnell, J., dissents.

2004-1547. In re Davis.

Franklin App. Nos. 04AP-184 and 04AP-210.

O'Donnell, J., dissents.

2004-1563. In re J.J.

Summit App. No. 21842, 2004-Ohio-4059.

RECONSIDERATION OF PRIOR DECISIONS

2001-0871. State v. Ahmed.

Belmont C.P. No. 99-CR-192, Reported at 103 Ohio App.3d 27, 2004-Ohio-4190, 813 N.E.2d 637. On motion for reconsideration, motion to strike, and motion for sanctions. Motion for reconsideration denied. Motions to strike and for sanctions dismissed as moot.

2004-0723. Covey v. Natural Foods, Inc.

Lucas App. No. L-03-1111, 2004-Ohio-1336. Reported at 2004-Ohio-4524. On motion for reconsideration. Motion denied.

2004-0808. State v. Leach.

Cuyahoga App. No. 82836, 2004-Ohio-1675. Reported at 2004-Ohio-4524. On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

2004-0913. State v. Reid.

Cuyahoga App. No. 83206, 2004-Ohio-2018. Reported at 2004-Ohio-4524. On motion for reconsideration. Motion denied.

2004-0932. Kuhn v. ADD, Inc.

Fairfield App. No. 03CA065, 2004-Ohio-2230. Reported at 2004-Ohio-4524. On motion for reconsideration. Motion denied.

Resnick, J., dissents.