

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

February 18, 2009

[Cite as *02/18/2009 Case Announcements, 2009-Ohio-614.*]

MERIT DECISIONS WITH OPINIONS

2007-1755. State v. Brewer, Slip Opinion No. 2009-Ohio-593.

Cuyahoga App. No. 87701, 2007-Ohio-4291. Judgment affirmed and cause remanded to the trial court.

Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.
Moyer, C.J., and Lanzinger, J., dissent.

2008-1250. State ex rel. Cincinnati Enquirer v. Heath, Slip Opinion No. 2009-Ohio-590.

Warren App. No. CA2008-03-046. Judgment reversed and cause remanded.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

2008-1441. State ex rel. Morgan v. State Teachers Retirement Bd. of Ohio, Slip Opinion No. 2009-Ohio-591.

Franklin App. No. 07AP-115, 2008-Ohio-2796. Judgment affirmed.

Moyer, C.J., and O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.
Pfeifer and Lundberg Stratton, JJ., dissent.

MERIT DECISIONS WITHOUT OPINIONS

2008-2400. State ex rel. Ealy v. Gorman.

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

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Sua sponte, relator, Larry E. Ealy, is determined to be a vexatious litigator under S.Ct.Prac. R. XIV(5)(B). Accordingly,

It is ordered by the court that Larry E. Ealy is prohibited from continuing or instituting legal proceedings in this court without first obtaining leave. Any request for leave shall be submitted to the Clerk of this court for the court's review.

2008-2480. Gibson v. Sheldon.

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

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

2008-2483. Starcher v. Ohio Adult Parole Auth.

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

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

2008-0033. Williams v. Butler Cty. Court of Common Pleas.

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

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

2009-0035. Blankenburg v. Jones.

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

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

MOTION AND PROCEDURAL RULINGS

1994-2537. State v. Wilson.

Lorain App. No. 92CA005396. On motion to set execution date. Motion granted.

It is ordered by this court that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility, or in his absence, by the Deputy Warden, on Wednesday, on June 3, 2009, in accordance with the statutes so provided.

It is further ordered that a certified copy of the entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional

Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Lorain County.

2006-1069. Minster Farmers Coop. Exchange Co., Inc. v. Dues.

Shelby App. No. 17-05-28, 2006-Ohio-1887. On motion to calculate, settle, and close the open book account. Motion denied.

Cupp, J., not participating.

2008-2486. State v. O'Hara.

Hamilton App. Nos. C-000314 and C-000318. On motion for leave to file delayed appeal. Motion denied.

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

2008-2495. State v. Garner.

Lake App. No. 2007-L-041, 2007-Ohio-5914. On motion for leave to file delayed appeal. Motion denied.

2009-0007. State v. Horsey.

Cuyahoga App. No. 89864, 2008-Ohio-4447. On motion for leave to file delayed appeal. Motion denied.

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

2009-0018. State v. Charley.

Cuyahoga App. No. 85356, 2005-Ohio-4116. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-0019. State v. Nethers.

Licking App. No. 07 CA 78, 2008-Ohio-2679. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-0020. State v. Nelson.

Cuyahoga App. No. 90827, 2008-Ohio-5735. On amended motion for stay of court of appeals' judgment and release on bail. Motion denied.

2009-0024. State v. Oko.

Cuyahoga App. No. 87539, 2007-Ohio-538. On motion for leave to file delayed appeal. Motion denied.

2009-0046. State v. Whatley.

Summit App. No. 24231, 2008-Ohio-6128. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 1 of the court of appeals' Journal Entry filed December 23, 2008:

“Where a criminal defendant files a motion seeking to vacate his sentence does R.C. 2953.21 apply to the motion where the defendant has not had a direct appeal?

Pfeifer, O'Donnell, and Cupp, JJ., dissent.

The conflict case is *State v. Edmisten*, Franklin App. No. 08AP-515, 2008-Ohio-5372.

2009-0054. Mynes v. Brooks.

Scioto App. No. 07CA3185, 2008-Ohio-5613. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 6 of the court of appeals' Entry filed December 12, 2008:

“Whether R.C. 2711.02 orders, which are not applicable to all the parties or claims, are final appealable orders without Civ.R. 54(B) language.”

Pfeifer, J., dissents.

The conflict cases are *Stewart v. Shearson Lehman Brothers, Inc.* (1992), 71 Ohio App.3d 305, and *Barnes v. Andover Village Retirement Community, Ltd.*, Ashtabula App. No. 2006-A-0039, 2007-Ohio-4112.

2009-0058. Freeman v. Freeman.

Seneca App. No. 13-08-20, 2008-Ohio-6073. On motion for stay of court of appeals' judgment. Motion denied.

Cupp, J., dissents.

2009-0070. State v. Kelley.

Jefferson App. No. 08 JE 4, 2008-Ohio-6598. On motion for stay of execution of sentence. Motion denied.

2009-0075. State v. Stone.

Warren App. No. CA2007-11-132, 2008-Ohio-5671. On motion for stay of court of appeals' judgment. Motion denied.

2009-0099. State v. Jackson.

Ashtabula App. No. 2007-A-0079, 2008-Ohio-6976. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, J., dissents.

2009-0124. JP Morgan Chase Bank v. Wells Fargo Financial Leasing, Inc.
Logan App. No. 8-08-07, 2008-Ohio-6354. On motion for stay of execution of judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2008-1996. State v. Sutton.

Cuyahoga App. No. 90172, 2008-Ohio-3677. Discretionary cross-appeal accepted; cause held for the decision in 2008-2037, *State v. Williams*, Cuyahoga App. No. 89726, 2008-Ohio-5149 and 2008-Ohio-5286; and briefing schedule stayed.

Pfeifer, O'Donnell, and Lanzinger, JJ., dissent.

Discretionary appeal not accepted.

2008-2056. Rothman v. Rothman.

Lorain App. No. 07CA009295, 2008-Ohio-4501.

Pfeifer, O'Connor, and Lanzinger, JJ., dissent.

2008-2150. State v. Garltic.

Cuyahoga App. No. 90128, 2008-Ohio-4575.

Pfeifer and Lanzinger, JJ., dissent.

2008-2173. Estate of Heintzelman v. Air Experts, Inc.

Delaware App. No. 07CAE090045, 2008-Ohio-4883.

Pfeifer, O'Connor, and Cupp, JJ., dissent.

2008-2183. Lambert v. Clancy.

Hamilton App. No. C-070600, 178 Ohio App.3d 403, 2008-Ohio-4905.

Pfeifer and Cupp, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2008-1280. State v. Murphy.

Ottawa App. No. OT-07-041, 176 Ohio App.3d 345, 2008-Ohio-2382.

O'Donnell, J., dissents.

2008-1602. State v. Moore.

Huron App. No. H-07-033, 2008-Ohio-2735.

2008-1658. State v. Meyers.

Summit App. Nos. 23864 and 23903, 2008-Ohio-2528.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. III.

2008-1660. State v. McCullough.

Putnam App. No. 12-07-09, 2008-Ohio-3055.

2008-1690. State v. Anaya.

Lucas App. No. L-06-1375, 2008-Ohio-1853.

2008-1827. State v. Pate.

Cuyahoga App. No. 90093, 2008-Ohio-2934.

2008-2007. Karnofel v. Girard Police Dept.

Trumbull App. Nos. 2008-T-0043 and 2008-T-0048, 2008-Ohio-4414. Discretionary appeal not accepted. Motion to strike motion for leave to file waiver of memorandum denied as moot.

2008-2008. State v. Wilkerson.

Montgomery App. No. 22693, 2008-Ohio-4750.

2008-2012. Watson v. Akron.

Summit App. No. 24077, 2008-Ohio-4995.

2008-2028. Rogers v. Pahoundis.

Coshocton App. No. 07 CA 0007, 178 Ohio App.3d 229, 2008-Ohio-4468. Discretionary appeal not accepted. Motions for preliminary injunction, for order of replevin, and for appointment of receiver denied as moot.

2008-2038. State v. Sabatina.

Guernsey App. No. 08CA000011, 2008-Ohio-4852.

Moyer, C.J., and O'Donnell, J., dissent and would accept the appeal on Proposition of Law No. I.

2008-2039. Isreal v. Masterson.

Franklin App. No. 08AP-427.

2008-2041. State v. Metcalf.

Montgomery App. No. 22367, 2008-Ohio-4535.

2008-2046. State v. Vance.

Ashland App. No. 2007-COA-035, 2008-Ohio-4763.

2008-2049. State v. Morales.

Lucas App. No. L-07-1231, 2008-Ohio-4619.

2008-2051. State v. Rodriguez-Baron.

Mahoning App. No. 07-MA-86, 2008-Ohio-4816.

2008-2060. Schneider v. Schneider.

Lorain App. No. 07CA009219, 178 Ohio App.3d 264, 2008-Ohio-4495.
O'Donnell, J., dissents.

2008-2065. State v. Crish.

Allen App. No. 1-08-13, 2008-Ohio-5196.

2008-2074. State v. Porter.

Montgomery App. No. 22369, 178 Ohio App.3d 304, 2008-Ohio-4627.
Lundberg Stratton, J., dissents.

2008-2077. State v. McDade.

Licking App. No. 2007CA00092, 2008-Ohio-4885.

2008-2080. State v. Sapp.

Morgan App. No. 07CA11, 2008-Ohio-5083.

2008-2090. State v. Walker.

Lucas App. No. L-07-1156, 2008-Ohio-4614.

2008-2093. Williams v. Barrick.

Franklin App. No. 08AP-133, 2008-Ohio-4592.

2008-2100. Burnip v. Nickerson.

Columbiana App. No. 07-CO-42, 2008-Ohio-5052.

2008-2105. State v. Cotton.

Hamilton App. No. C-080821.

2008-2108. Miller v. Volkswagen of Am., Inc.

Erie App. No. E-07-047, 2008-Ohio-4736. Discretionary appeal not accepted.

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

Motion for admission pro hac vice of Daniel V. Gsovski by Martin T. Galvin granted.

2008-2111. State v. Johnson.

Shelby App. No. 17-08-06, 2008-Ohio-4784.

2008-2113. State v. Smith.

Hamilton App. No. C-060133.

2008-2114. Ohio Dept. of Transp. v. McHenry.

Scioto App. No. 08CA3229, 2008-Ohio-4720.

2008-2118. State ex rel. Davis v. School Emps. Retirement Sys.

Franklin App. No. 08AP-214, 2008-Ohio-4719.

Lanzinger, J., dissents.

Cupp, J., dissents and would accept the appeal and affirm the judgment of the court of appeals on the authority of *State ex rel. Marchiano v. School Emps. Retirement Sys.*, ___ Ohio St.3d ___, 2009-Ohio-307, ___ N.E.2d ___.

2008-2120. Rivers v. W. Credit Union, Inc.

Franklin App. No. 08AP-175, 2008-Ohio-4718.

2008-2122. OC Property Mgt., L.L.C. v. Gerner & Kearns Co., L.P.A.

Cuyahoga App. No. 90736, 2008-Ohio-4709.

2008-2124. Kazoun v. Kazoun.

Summit App. No. 24227.

2008-2130. Jenkins v. Sandusky.

Erie App. No. E-07-067, 2008-Ohio-4742.

O'Donnell, J., dissents.

2008-2132. State v. Solether.

Wood App. No. WD-07-053, 2008-Ohio-4738.

2008-2135. State v. McIntosh.

Erie App. No. E-07-048, 2008-Ohio-4743.

2008-2136. Estate of Williams v. Deutsche Bank Trust Co. Am.

Cuyahoga App. No. 90967, 2008-Ohio-3981.

2008-2137. Law Offices of Jack A. Donenfeld, L.P.A. v. McAdam.

Hamilton App. No. C-070641. Discretionary appeal not accepted. Motion to strike notice of appeal and memorandum in support of jurisdiction denied as moot.

2008-2140. State v. Fretas.

Franklin App. No. 07AP-1046, 2008-Ohio-4686.
O'Donnell, J., dissents.

2008-2142. Annichenni v. Zdrilich.

Mahoning App. No. 08 MA 119, 2008-Ohio-4805.

2008-2144. State v. Evans.

Medina App. No. 07CA0057-M, 2008-Ohio-4772.

2008-2145. State v. Castle.

Mahoning App. No. 07-MA-109, 2008-Ohio-4814.

2008-2148. State v. Tuggle.

Lucas App. No. L-07-1284, 2008-Ohio-5020.

2008-2155. State v. Wykof.

Lake App. No. 2008-L-083, 2008-Ohio-4980.

2008-2156. State v. Stanley.

Summit App. No. 23832, 2008-Ohio-4840.

2008-2157. State v. Ouch.

Franklin App. No. 08AP-79, 2008-Ohio-4894.

2008-2158. Forrer v. Buckeye Speedway, Inc.

Wayne App. No. 07CA0027, 2008-Ohio-4770.
Lanzinger, J., dissents.

2008-2161. Yoel v. Yoel.

Lake App. No. 2008-L-006, 2008-Ohio-4768.

2008-2162. In re Estate of Boccia.

Trumbull App. No. 2007-T-0060, 2008-Ohio-4764.

2008-2163. Jovanovski v. Kotefski.

Lorain App. Nos. 07CA009203 and 07CA009223, 2008-Ohio-4773.
Moyer, C.J., dissents.

2008-2164. Byers v. Robinson.

Franklin App. No. 08AP-204, 2008-Ohio-4833.

2008-2174. State v. Mizell.

Hamilton App. Nos. C-070750 and C-070751, 2008-Ohio-4907.

2008-2177. State v. Frasch.

Licking App. Nos. 2008CA0102 and 2008CA0160.

2008-2178. State v. Lungs.

Montgomery App. No. 22704, 2008-Ohio-4928.

2008-2180. Bevington v. Thomas.

Hamilton App. No. C-070405.

2008-2181. State v. Phillips.

Cuyahoga App. No. 90124, 2008-Ohio-5101.
Lundberg Stratton, J., dissents.

2008-2182. Neighbor v. Nalepka.

Cuyahoga App. No. 90716, 2008-Ohio-4708.

2008-2189. State v. McCoy.

Lorain App. No. 08CA009329, 2008-Ohio-4947.
Moyer, C.J., dissents.

2008-2190. State v. Thompkins.

Franklin App. No. 08AP-454, 2008-Ohio-5373.

2008-2192. State v. McDonald.

Hancock App. No. 5-08-42.

2008-2198. State v. Jensen.

Pickaway App. No. 07CA21, 2008-Ohio-5228.

2008-2200. Brooke v. Ohio State Dental Bd.

Lorain App. No. 08CA009325, 2008-Ohio-4949.

O'Donnell, J., dissents.

2008-2203. State v. Ridenour.

Warren App. Nos. CA2007-12-145 and CA2007-12-146.

2008-2205. Fronsman v. Risaliti.

Stark App. No. 2008CA00028, 2008-Ohio-5074.

2008-2210. State v. Harris.

Champaign App. No. 07-CA-32, 2008-Ohio-5165.

2008-2213. McLaughlin v. McLaughlin.

Athens App. No. 08CA7, 178 Ohio App.3d 419, 2008-Ohio-5284.

2008-2234. State v. Wade.

Cuyahoga App. No. 90145, 2008-Ohio-4870.

2008-2236. State v. Richards.

Summit App. No. 23968, 2008-Ohio-5237.

2008-2254. State v. Feltner.

Butler App. No. CA2008-01-009, 2008-Ohio-5212.

2008-2350. State v. Bowman.

Montgomery App. No. 18176.

2008-2369. Mynes v. Brooks.

Scioto App. No. 07CA3185, 2008-Ohio-5613.

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

2008-2482. Garner v. Greenwalt.

Stark App. No. 2007 CA 00296, 2008-Ohio-5963.

O'Donnell, J., dissents.

2009-0002. State v. El-Amin.

Lucas App. No. L-05-1286, 2007-Ohio-3949.

2009-0011. State v. Snodgrass.

Clark App. Nos. 07-CA-95 and 07-CA-96, 177 Ohio App.3d 556, 2008-Ohio-4019.

2009-0037. State v. Whatley.

Summit App. No. 24231, 2008-Ohio-6128.

Lundberg Stratton, J., dissents.

Lanzinger and Cupp, JJ., dissent and would accept the appeal on Proposition of Law No. I.

RECONSIDERATION OF PRIOR DECISIONS

2007-1546. In re Guardianship of Richardson.

Montgomery App. No. 22000, 172 Ohio App.3d 410, 2007-Ohio-3462. Reported at 120 Ohio St.3d 438, 2008-Ohio-6696, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

2008-1902. [State ex rel.] Martin v. Collins.

In Mandamus. Reported at 120 Ohio St.3d 1449, 2008-Ohio-6813, 898 N.E.2d 965. On motion for reconsideration. Motion denied.