

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M. WEDNESDAY  
October 2, 1996

MERIT DOCKET

96-1223. State ex rel. Graham v. Rinker.

In Mandamus. On motion to dismiss by Mary O. Boyle et al., motion to dismiss by Margaret A. Egensperger, motion to dismiss by Bruce G. Rinker, and motion to dismiss by Donald Schregardus. Motions to dismiss sustained. Cause dismissed.

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

Pfeifer, J., dissents and would grant an alternative writ.

96-1629. State ex rel. DeCarlo v. Sweeney.

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

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

Stratton, J., dissents.

96-1640. State ex rel. Gaines v. Common Pleas Court Clerk of Court.

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

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

96-1693. State ex rel. Ferrell v. Ghee.

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

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

96-1728. Thomson v. Ohio Dept. of Rehab. & Corr.

In Mandamus. On motion to dismiss and on motion for summary judgment. Motion to dismiss sustained. Cause dismissed.

Douglas, Resnick, F.E. Sweeney and Stratton, JJ., concur.

Moyer, C.J., Pfeifer and Cook, JJ., dissent and would grant a peremptory writ.

96-1769. State ex rel. Jackson v. Kinkela.

In Mandamus. On answer of respondent, motion for discovery, and motion for leave to amend complaint. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

96-1776. Doyle v. Romanoff.

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

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

96-1784. State ex rel. Brandt v. Lake 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 Stratton, JJ., concur.

96-1804. State ex rel. Brown v. Ohio Adult Parole Auth.

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 Stratton, JJ., concur.

96-1805. State ex rel. Relliford v. Cuyahoga 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 Stratton, JJ., concur.

96-1817. State ex rel. Christopher v. Fuerst.

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

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

Stratton, J., dissents and would grant an alternative writ.

96-1868. State ex rel. Hitt v. Summit 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 Stratton, JJ., concur.

96-2089. State ex rel. Morrow v. Barber.

In Prohibition. Sua sponte, cause dismissed.

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

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

96-893. State v. Redmond.

Crawford App. No. 3-95-24.

96-896. Markey v. Barrett.

Montgomery App. No. 15243.

96-909. Cleveland v. Pisani.

Cuyahoga App. No. 69323.

96-916. State v. Sharp.  
Clinton App. No. CA95-06-017.

96-932. Petersen, Ibold & Wantz v. Whiting.  
Geauga App. No. 95-G-1910.

96-939. Smith v. Ohio Dept. of Human Serv.  
Clermont App. No. CA95-07-044. Discretionary appeal and motion for leave to exceed page limit denied.

96-965. State v. Hunter.  
Montgomery App. No. 15305.  
Douglas, J., dissents.

96-977. State v. Lechner.  
Highland App. No. 95CA883.

96-978. State v. Smith.  
Summit App. No. 16910.

96-995. Rogers v. Benefit Serv. Agency of Ohio, Inc.  
Summit App. No. 17374.

96-1003. Slivka v. Slivka.  
Cuyahoga App. No. 69146.

96-1007. State v. Miller.  
Meigs App. No. 94CA9.  
Moyer, C.J., and Douglas, J., dissent.

96-1014. State v. Hadi.  
Summit App. No. 17294. Discretionary appeal and cross-appeal denied.

96-1020. State v. Gilbert.  
Lucas App. No. L-95-140.  
Resnick, J., not participating.

96-1021. State v. Snyder.  
Hamilton App. No. C-960057.  
Stratton, J., not participating.

96-1028. State v. Donnelly.  
Summit App. Nos. 17459, 17511 and 17565.

96-1040. Brecksville v. Marchetti.  
Cuyahoga App. No. 69189.

96-1043. State v. Lake.  
Franklin App. No. 95APA07-847.

96-1064. Hargreaves v. Carter.  
Summit App. No. 17450.

96-1065. State v. Kuhn.

Meigs App. No. 94CA24.

96-1066. State v. Rodrigues.  
Franklin App. No. 95APA06-683.

96-1072. State v. Jordan.  
Clark App. No. 94CA33.

96-1076. State v. Wilcox.  
Cuyahoga App. No. 69492.

96-1089. Pollock v. Brigano.  
Warren App. No. CA96-03-022.

96-1101. State v. Duffy.  
Fayette App. No. CA95-03-006.

96-1161. Oliver v. Rossen.  
Cuyahoga App. No. 69271.

96-1191. State v. Patterson.  
Franklin App. No. 95APA10-1339. Discretionary appeal and cross-appeal denied.

96-1195. Smith v. Ohio Dept. of Human Serv.  
Clermont App. No. CA95-07-044.

96-1219. State v. Quillen.  
Fairfield App. No. 95CA61.  
Moyer, C.J., and Stratton, J., dissent.

96-1224. State v. Wood.  
Hamilton App. No. C-950389.

#### MOTION DOCKET

95-131. Estates of Morgan v. Fairfield Family Counseling Ctr.  
Fairfield App. No. 94CA11. On motion to file statement of additional  
authorities by Estates of Jerry L. and Marlene F. Morgan. Motion denied.

95-2561. Clermont Cty. ADAMH Bds. v. Hogan.  
Clermont App. Nos. CA94-09-074, CA94-10-079, CA94-10-080 and CA94-10-082. On  
joint motion to supplement record. Motion granted.

96-534. Levensgood v. Transfuel, Inc.  
Tuscarawas App. No. 95AP060050. On submission of fees and costs and on motion  
for leave to file objections to submission of fees and costs. Motion for leave  
granted.  
Douglas, J., dissents, and would deny the motion and grant fees and costs.

96-535. Levensgood v. Transfuel, Inc.  
Tuscarawas App. No. 95AP060049. On submission of fees and costs and on motion  
to file objections to submission of fees and costs. Motion for leave granted.  
Douglas, J., dissents, and would deny the motion and grant fees and costs.

96-976. State ex rel. Conley v. N. Cent. Correctional Inst.

In Habeas Corpus. On motion for findings of fact and conclusions of law.  
Motion denied.

96-1205. State v. May.

Hamilton App. No. C-960124. On motion to vacate entry striking motion to vacate. Motion denied.

96-1345. State v. Larson.

Cuyahoga App. No. 69560. On motion for stay pending disposition of motion in common pleas court. Motion denied.

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

96-1577. Buckeye Foods v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, No. 94-T-317. On motion to consolidate case with 96-1578, Buckeye Foods v. Cuyahoga Cty. Bd. of Revision, BTA No. 94-T-320; 96-1579, Buckeye Foods v. Cuyahoga Cty. Bd. of Revision, BTA No. 94-T-321; and 96-1580, Buckeye Foods v. Cuyahoga Cty. Bd. of Revision, BTA No. 94-T-318. Motion granted.

96-1596. State ex rel. Miami Student v. Miami Univ. Bd. of Trustees.

On motion for judgment on pleadings and on the answer of respondent. Sua sponte, oral argument granted.

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

Sua sponte, alternative writ granted.

96-1605. Smith v. Lorain Cty. Bd. of Elections.

In Prohibition. On motion for relief from judgment. Motion denied.

96-1676. State ex rel. Mad River-Green Loc. School Dist. Bd. of Edn. v. Sodders.

In Mandamus. On answer of respondent. Sua sponte, alternative writ granted.

96-1712. Smith v. Ohio Dept. of Human Serv.

Clermont App. No. CA96-05-045. On motion for stay. Motion denied.

96-1831. State v. Tarver.

Summit App. No. 17472. On motion for leave to file delayed appeal. Motion granted.

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

96-1844. State v. Jefferson.

Richland App. No. 95CA97. On motion for leave to file delayed appeal. Motion denied.

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

96-1847. State v. Nickelson.

Franklin App. No. 94APA04-582. On motion for leave to file delayed appeal. Motion denied.

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

96-1859. State v. Schiewe.

Wood App. No. WD95050. On motion for leave to file delayed appeal. The motion fails for want of four votes on the following vote:

F.E. Sweeney, Cook and Stratton, JJ., vote to deny.

Moyer, C.J., Douglas and Pfeifer, JJ., vote to grant.

Resnick, J., not participating.

96-1874. State v. Grodek.  
Medina App. No. 96CA2535M. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

96-1895. State v. Terrell.  
Lucas App. No. L-95-362. On motion to withdraw as counsel. Motion granted.

96-1905. State v. Vaughn.  
Butler App. No. CA95-01-011. On motion for leave to file delayed appeal. Motion denied.

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

96-1909. State v. Reece.  
Hamilton App. Nos. C-930257 and C-930279. On motion for leave to file delayed appeal. Motion denied.

96-1923. State v. Violi.  
Trumbull App. Nos. 94-T-5053 and 94-T-5059. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

96-1936. State v. Sanders.  
Portage App. No. 94-P-0132. On motion for leave to file delayed appeal. Motion denied.

96-1937. State v. Aloï.  
Summit App. No. 17670. On motion for leave to file delayed appeal. Motion denied.

Stratton, J., dissents.

96-1942. State v. Stonestreet.  
Summit App. No. 15721. On motion for leave to file delayed appeal. Motion denied.

96-1943. State v. Jerome.  
Marion App. No. 9-95-54. On motion for leave to file delayed appeal. Motion granted.

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

96-1972. State v. Stowers.  
Tuscarawas App. No. 94AP090066. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

96-2041. Kreps v. Pesina.  
Lucas App. No. L-95-377. On motion for stay. Motion denied.  
Resnick, J., not participating.

#### DISCRETIONARY APPEALS ALLOWED

96-915. State v. Nieheisel.  
Clermont App. No. CA95-11-081. Discretionary appeal allowed; sua sponte, cause held for the decision in 96-838, Akron v. Kirby, Summit App. No. 17307; briefing schedule stayed.

Douglas, J., dissents.

96-1000. Kocel v. Farmers Ins. of Columbus, Inc.  
Cuyahoga App. No. 69058.

Douglas, Cook and Stratton, JJ., dissent.

96-1006. Freedom Road Found. v. Ohio Dept. of Liquor Control.  
Franklin App. No. 95APE08-1030.

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

96-1031. State v. Sutherland.  
Hamilton App. No. C-950770.

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

96-1054. Enyart v. Columbus Metro. Area Community Action Org.  
Franklin App. No. 95APE08-1033.

Resnick, Cook and Stratton, JJ., dissent.

#### DISCRETIONARY APPEALS NOT ALLOWED

96-902. Gonder v. ADA Community Improvement Corp.  
Hardin App. No. 6-95-18.

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

96-904. Neff v. Bainbridge Bowling Co.  
Geauga App. No. 95-G-1941.

96-928. Sofia v. Koren.  
Cuyahoga App. Nos. 68236 and 68922.

Moyer, C.J., and F.E. Sweeney, J., dissent.

96-929. DeWitt v. Nationwide Mut. Fire Ins. Co.  
Lake App. No. 95-L-106.

Douglas, J., dissents.

96-943. Bennett v. Kroger Co.  
Hamilton App. No. C-950387.

Resnick, J., dissents.

96-947. Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co.  
Franklin App. Nos. 95APE08-1029 and 95APE09-1202.

96-963. Scott v. Spearman.  
Licking App. No. 95CA55.

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

96-964. Yudin v. Knight Industries Corp.  
Lucas App. No. L-95-260.

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

96-990. Cuyahoga Cty. Support Enforcement Agency v. Smith.  
Cuyahoga App. No. 69379.

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

96-997. Carrier v. Weisheimer Cos., Inc.  
Franklin App. No. 95APE04-488.

96-998. Cushman v. Ohio Dept. of Transp.  
Franklin App. No. 95API07-844.

96-1001. Evans v. Leona Culbertson Trust.  
Knox App. No. 9CA5000031.

96-1011. State v. Brewer.  
Cuyahoga App. No. 67782.

96-1022. State v. Burkhammer.  
Franklin App. No. 95APA10-1356.  
Moyer, C.J., Resnick and Stratton, JJ., dissent.

96-1026. Doucette v. Keck.  
Hamilton App. No. C-950589.

96-1030. Miller v. Bike Athletic Co.  
Belmont App. No. 94-B-52. Discretionary appeal and motion for admission pro hac  
vice of Louis M. Tarasi, Jr., denied.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

96-1038. Starkey v. Starkey.  
Tuscarawas App. No. 95AP070055.  
Resnick, J., dissents.

96-1070. State v. Owens.  
Mahoning App. No. 84 C.A. 131.

96-1086. Dayton v. Whiting.  
Montgomery App. No. 15432.  
Moyer, C.J., Cook and Stratton, JJ., dissent.

96-1092. Howard v. Kuehnert.  
Franklin App. No. 95APE09-1197.

96-1097. Bisel v. Ward.  
Huron App. No. H-95-046.  
Moyer, C.J., dissents in part and would allow on Proposition of Law No.  
II.  
Resnick, J., not participating.

96-1098. Nichols v. Hanzel.  
Scioto App. No. 94CA2316.

96-1130. Hoegler v. Auto Site Recovery Serv., Inc.  
Medina App. No. 2459-M.

96-1148. Progressive Bros. Constr. Co. v. Cuyahoga Cty. Bd. of Commrs.  
Cuyahoga App. No. 69315.

96-1151. State v. Havens.  
Fayette App. No. CA95-07-017.

96-1498. State v. Cockrell.  
Knox App. No. 91CA30.



96-1520. State v. Sanford.  
Wood App. No. 92WD057.  
Resnick, J., not participating.

96-1685. State v. Jones.  
Hamilton App. Nos. C-940131 and C-940143.  
Stratton, J., not participating.

96-1726. State v. Robbins.  
Licking App. No. 93CA30.

96-1821. State v. Easter.  
Cuyahoga App. No. 66393.

96-1973. State v. Strickland.  
Montgomery App. No. 15368.

#### RECONSIDERATION DOCKET

94-2171. State ex rel. Ehlinger v. Indus. Comm.  
Franklin App. No. 93APD10-1393. Reported at 76 Ohio St.3d 400, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-389. Shaper v. Tracy.  
Board of Tax Appeals, No. 93-X-1032. Reported at 76 Ohio St.3d 241, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Stratton, J., not participating.

95-1334. In re Grand Jury.  
Washington App. Nos. 93CA09, 93CA10 and 93CA12. Reported at 76 Ohio St.3d 236, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration of Michael Elkins. Motion denied.

95-1616. Mishr v. Bd. of Zoning Appeals.  
Mahoning App. No. 93 C.A. 234. Reported at 76 Ohio St.3d 238, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Moyer, C.J., Pfeifer and Cook, JJ., dissent.

95-2639. In re Contested Election of Nov. 7, 1995.  
Lorain C.P. No. 95CV115361. Reported at 76 Ohio St.3d 234, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration and on motion to consolidate case with 96-1944, Kayser v. Lorain Cty. Bd. of Elections, Lorain App. No. 95CA006308. Motions denied.

96-135. Fraiberg v. Cuyahoga Cty. Court of Common Pleas, Div. of Domestic Relations.  
In Prohibition. Reported at 76 Ohio St.3d 374, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Douglas and F.E. Sweeney, JJ., dissent.

96-195. State v. Jones.  
Franklin App. No. 89AP-424. Reported at 76 Ohio St.3d 260, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.

96-1538. Gaines v. Page.

In Habeas Corpus. Reported at 76 Ohio St.3d 1433, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

96-1743. State ex rel. Northup v. Gallia Cty. Bd. of Elections.

In Prohibition. Reported at 76 Ohio St.3d 1463, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.