

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY
July 3, 1996

MERIT DOCKET

96-417. State ex rel. Yontz v. Netting.
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.

96-691. Marcella v. Nationwide Mut. Ins. Co.
Cuyahoga County, No. 69086. On review of order certifying a conflict. Sua sponte, cause dismissed for want of a proper order certifying a conflict within the meaning of S.Ct.Prac.R. IV(2) (A).

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

Stratton, J., not participating.

96-786. State ex rel. Better Built Homes of Hillsboro, Inc. v. Armstrong.
In Mandamus. On motion for judgment on pleadings of Wanda E. Armstrong, answer of respondent Wanda E. Armstrong, answer of respondent William Fawley, and motion to dismiss of William Fawley. Sua sponte, cause dismissed.

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

Pfeifer, J., dissents and would grant the writ.

96-787. State ex rel. Quinn v. Davies.
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.

96-975. State ex rel. Shie v. Ninth Dist. Court of Appeals.
In Mandamus. Sua sponte, cause dismissed.

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

96-1051. State ex rel. Massie v. Wilkinson.
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.

96-1058. State ex rel. Young 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.

96-1075. State ex rel. Brown v. Wilkinson.
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.

96-1083. State ex rel. Ballard v. Lucas Cty. Court of Appeals.
On motions to dismiss. Motions to dismiss sustained. Cause dismissed.

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

Resnick, J., not participating.

96-1133. State ex rel. Flynn v. Mt. Vernon Mun. 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.

96-1220. Gordon v. Mackey.
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.

96-1285. Robinson v. Hamilton Cty. Court of Common Pleas, Juv. Div.
In Prohibition. Sua sponte, cause dismissed.

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

96-1387. State ex rel. Rife v. Klosterman.
In Mandamus and 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

95-2507. State v. McMillen.
Ashtabula County, No. 94-A-0050.
Pfeifer, J., dissents.

96-246. Dworken & Bernstein Co., L.P.A. v. Indus. Comm.
Franklin County, No. 95APE05-546.
Douglas, J., dissents.

96-251. State v. Harris.

Knox County, No. 958.

96-252. Randolph Twp. Trustees v. Portage Cty. Agricultural Soc.
Portage County, No. 94-P-0108.

96-257. Brecksville v. Marchetti.
Cuyahoga County, Nos. 67719 and 67722.

96-258. State v. Thompson.
Allen County, No. 1-95-51.

96-260. Johnson v. Morris.
Ross County, No. 95CA2108.

96-264. John G. Black Enterprises, Inc. v. Centerville City Schools Bd. of Edn.
Montgomery County, No. 15036.

96-265. State v. Steele.
Franklin County, No. 95APA06-812.

96-266. State v. Horton.
Franklin County, No. 95APA04-455.

96-268. Nelson v. Ford Motor Co.
Lake County, No. 94-L-106.
Douglas, J., would allow on Proposition of Law No. I only.
Stratton, J., would allow.

96-269. Daloia v. Franciscan Health Sys. of Cent. Ohio, Inc.
Franklin County, No. 95APE-06-808.

96-272. State v. Verdun.
Clark County, No. 95CA9.

96-277. Ogden v. Raymond Corp.
Wayne County, No. 95CA0001. Discretionary appeal and cross-appeal denied.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-281. Planey v. Planey.
Mahoning County, No. 95 C.A. 213.

96-286. State v. Gonyou.
Lucas County, No. L-95-089.
Douglas, F.E. Sweeney and Stratton, JJ., dissent.

96-287. State v. Correa.
Lucas County, No. L-95-104.
Douglas, F.E. Sweeney and Stratton, JJ., dissent.

96-288. Natl. Electrical Contrs. Assn., Inc. v. Mentor.
Lake County, Nos. 95-L-060 and 95-L-062.
Stratton, J., not participating.

96-293. State v. Robinson.
Crawford County, No. 3-95-13.

96-294. State v. Verdun.
Clark County, No. 95CA13.

96-295. In re Infant Girl Howard.
Franklin County, No. 95APF03-315.

96-296. Hawkins v. Toledo.
Lucas County, No. L-95-112.
Resnick, J., not participating.

96-313. State ex rel. Clermont Cty. Dept. of Human Serv. v. Walsson.
Clermont County, No. CA95-02-013.

96-317. In re Guardianship of Maurer.
Wood County, No. WD-94-070.

96-320. Jennewine v. Heinig.
Greene County, No. 95CA12.

96-325. Hrabak v. Collins.
Cuyahoga County, No. 68913.

96-327. State v. Corpening.
Franklin County, No. 95APA05-523.

96-328. State v. Johnson.
Ross County, No. 94CA2004.

96-330. Cherovsky v. Luke's Hosp. of Cleveland.
Cuyahoga County, No. 68326.
Moyer, C.J., Douglas and Resnick, JJ., dissent.

96-331. State v. Parsons.
Montgomery County, No. 14423.

96-333. Dailey v. Trimble.
Franklin County, No. 95APE07-951.

96-334. Route 20 Bowling Alley, Inc. v. Mentor.
Lake County, No. 94-L-141.
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

96-336. State v. Robertson.
Ashland County, No. CA1112.

96-337. State v. MacFarland.
Greene County, No. 95CA20.
Douglas, J., dissents.

96-343. State v. Broadnax.
Cuyahoga County, Nos. 67360 and 67361.
F.E. Sweeney and Pfeifer, JJ., dissent.

96-344. State v. Fiorenzo.
Trumbull County, No. 94-T-5172.

96-348. State v. Mahoney.
Lorain County, No. 94CA006022.

96-354. Fales v. Fales.
Hamilton County, Nos. C-941037 and C-941039.
Stratton, J., not participating.

96-355. Jones v. Multi-Color Corp.
Hamilton County, No. C-940722. (Appeal of Administrator, Ohio Bureau of
Workers' Compensation and Industrial Commission of Ohio; second appeal by Multi-
Color Corporation.)
Moyer, C.J., and Cook, J., dissent.

96-356. Ohio College of Limited Med. Practice v. Ohio Med. Bd.
Franklin County, No. 95APE06-740.
Douglas and Stratton, JJ., dissent.

96-358. State v. First.
Summit County, No. 17293.

96-360. Starr v. Delta Air Lines, Inc.
Hamilton County, No. C-950217.

96-361. State v. Murphy.
Brown County, No. CA95-05-010.
Moyer, C.J., dissents.

96-365. Sarossy v. Sarossy.
Cuyahoga County, No. 67493.

96-370. State v. Talani.
Cuyahoga County, No. 68750.

96-372. State v. Lester.
Hamilton County, No. C-9500451.

96-391. Velasquez v. Ghee.
Lorain County, No. 95CA006113.
Cook, J., not participating.

96-398. State v. Fields.
Hamilton County, No. C-950202.

96-403. Habeeb v. Stanley Magic Door, Inc.
Cuyahoga County, No. 68793.

96-404. State v. Arnette.
Summit County, No. 17219.

96-440. Bender v. Univ. of Toledo.
Lucas County, No. L-94-290.

96-443. State v. McCalister.
Summit County, No. 17088.

96-459. State v. Sherman.

Mahoning County, No. 94 C.A. 86.

96-467. In re Estate of Borgh.
Cuyahoga County, Nos. 68033 and 68145.
Pfeifer, J., dissents.

96-485. Schweizer v. Riverside Methodist Hosp.
Franklin County, No. 95APE03-277.
Douglas and F.E. Sweeney, JJ., dissent.

96-491. State v. Smith.
Cuyahoga County, No. 68643.

96-563. Wiley v. Gibson.
Hamilton County, No. C-950359.
Stratton, J., not participating.

96-568. Burks v. Peck, Shaffer & Williams.
Cuyahoga County, No. 68809. (Appeal of Gold, Rotatori, Schwartz, Gibbons Co.,
L.P.A. and Robert A. Renallo; second appeal of Peck, Shafer & Williams and Mark
D. Blocher; third appeal by Rogers, Horton, Forbes & Teamor.)
Douglas, F.E. Sweeney and Stratton, JJ., dissent.

96-599. State v. Miller.
Cuyahoga County, Nos. 66915 and 68323.

96-617. State v. Habash.
Summit County, No. 17073.

96-621. Columbus Metro. Community Action Org. v. Enyart.
Franklin County, No. 95APE11-1510.

96-692. State v. Cotton.
Cuyahoga County, Nos. 69394 and 69425.

96-752. State v. Whitlock.
Hamilton County, No. C-950591.

96-755. Hill v. Hill.
Montgomery County, No. 15081.
Moyer, C.J., dissents.

96-815. Walsson v. Walsson.
Clermont County, No. CA95-09-062.

MOTION DOCKET

87-1614. State v. Benner.
Summit County, No. 12664. On motion to reinstate stay of execution. Motion
denied; sua sponte, September 10, 1996 set as the execution date.

88-717. State v. Tyler.
Cuyahoga County, No. 51696. On motion to reinstate stay of execution. Motion
denied; sua sponte, September 10, 1996 set as the execution date.

89-70. State v. Montgomery.

Lucas County, No. L-86-395. On motion to set execution date. Motion granted; date set at September 10, 1996.

92-2565. State v. Scudder.

Franklin County, No. 91AP-506. On motion for extension of stay for opportunity to file post-conviction petition. Motion granted and thirty days only allowed.

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

94-722. State v. Fautenberry.

Hamilton County, No. C-920734. On motion to extend stay of execution. Motion denied.

Resnick, J., dissents.

94-756. State v. Gumm.

Hamilton County, No. C-920907. On motion to vacate entry of May 6, 1996. Motion granted.

Resnick, Pfeifer and Cook, JJ., dissent.

95-2314. Hicks v. Westinghouse Materials Co.

Hamilton County, No. C-940094. On motion to strike and dismiss and on motion to strike by Administrator, Bureau of Workers' Compensation, and Industrial Commission of Ohio. Motions denied; sua sponte, brief ordered supplemented to comply with the Supreme Court Rules of Practice.

95-2467. Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.

Franklin County, No. 95APE04-401. On motion for ruling on notice of cross-appeal of Foster Wheeler Enviresponse, Inc. The cross-appeal is allowed and is consolidated with the previously allowed appeal. See 75 Ohio St.3d 1498, ___ N.E.2d ____.

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

95-2575. Ohio Edison Co. v. Pub. Util. Comm.

Public Utilities Commission, No. 93-1408-EL-CSS. On motion to exceed page limitation for reply brief. The motion fails for want of four votes on the following vote:

Moyer, C.J., F.E. Sweeney and Pfeifer, JJ., vote to deny.

Douglas, Resnick and Stratton, JJ., vote to grant.

Cook, J., not participating.

96-452. State v. Davie.

Trumbull County, No. 92-T-4693. On motion to withdraw as counsel by Roger Warner. Motion granted.

On motion for appointment of Harry Reinhart. Sua sponte, request remanded to the court of appeals for appointment of counsel.

96-950. State v. Rainwater.

Montgomery County, No. 12056. On motion for leave to file delayed appeal. Motion denied.

Cook and Stratton, JJ., dissent.

96-1140. State v. Thompson.

Allen County, No. 1-96-10. On motion for leave to file delayed appeal. Motion granted.

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

96-1167. Fairhurst v. Owners Ins. Co.
Summit County, No. 17402. On motion for admission pro hac vice of Attorneys Michael P. Malakoff and Daniel M. Berger by Attorney Timothy H. Hanna. Motion granted.

96-1179. State v. Wells.
Franklin County, No. 93AP-1039. On motion for leave to file delayed appeal. Motion denied.

96-1197. State v. Butcher.
Cuyahoga County, No. 69744. On motion for leave to file delayed appeal. Motion denied.

96-1352. In re Robinson.
Hamilton County, No. C-960350. On motion for stay of execution of the order issued by the trial court. Motion denied.

96-1356. Strayer v. Federated Mut. Ins. Co.
Franklin County, No. 95APE11-1507. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated with 96-1125, infra, and held for the decision in 94-2569, Cole v. Holland, Summit County, No. 16703; briefing schedule stayed.
Douglas, J., dissents.
Stratton, J., not participating.

96-1382. Hughes v. Cleveland.
Cuyahoga County, No. 68869. On motion for stay of execution of the court of appeals' judgment and motion to set bond. Motions denied.

DISCRETIONARY APPEALS ALLOWED

96-203. Davis v. Immediate Med. Serv., Inc.
Stark County, No. 94CA0253. (Appeal by Alliance Immediate Care, Inc.; second appeal of E.M. Care of Alliance, Inc.; third appeal of Evelyn Davis.)
Moyer, C.J., Resnick and F.E. Sweeney, JJ., dissent.

96-270. State v. Freed.
Hancock County, No. 5-95-38. Sua sponte, cause held for the decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232; briefing schedule stayed.
Stratton, J., not participating.

96-271. Findlay v. Koziel.
Hancock County, No. 5-95-35. Sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.
Stratton, J., not participating.

96-323. Grennell v. Nationwide Mut. Ins. Co.
Franklin County, No. 95APE08-1084. Sua sponte, cause held for the decision in 94-2569, infra; briefing schedule stayed.
Stratton, J., not participating.

96-346. State v. Baker.
Montgomery County, No. 15051.
Resnick, Pfeifer and Cook, JJ., dissent.

96-347. Eason v. Nationwide Mut. Ins. Co.
Wayne County, No. 95CA0026. Sua sponte, cause held for the decision in 94-2569,
infra; briefing schedule stayed.
Stratton, J., not participating.

96-390. Layman v. Wood.
Ashtabula County, No. 95-A-0036.
Douglas, Resnick and Cook, JJ., dissent.

96-645. State v. Mangini.
Medina County, No. 2499-M. Sua sponte, cause held for the decision in 95-1377
and 95-1466, supra; briefing schedule stayed.
Stratton, J., not participating.

96-782. Marcella v. Nationwide Mut. Ins. Co.
Cuyahoga County, No. 69086. Discretionary appeal and cross-appeal allowed; sua
sponte, cause held for the decision in 95-269, Schaefer v. Allstate Ins. Co.,
Franklin County, No. 94APE04-507; briefing schedule stayed.
Stratton, J., not participating.

96-1125. Strayer v. Federated Mut. Ins. Co.
Franklin County, No. 95APE11-1507. Sua sponte, cause held for the decision in
94-2569, Cole v. Holland, Summit County, No. 16703; briefing schedule stayed.
Douglas, J., dissents.
Stratton, J., not participating.

DISCRETIONARY APPEALS NOT ALLOWED

96-241. Rucker v. Cvelbar Body & Paint Co.
Cuyahoga County, No. 68573.
Resnick and Stratton, JJ., dissent.

96-244. L & L Land Co. v. Mayfield Hts.
Cuyahoga County, No. 68397.

96-247. Walters v. Sorg Paper Co.
Butler County, No. CA95-04-072.

96-253. John O. Clay Exploration v. Lawrence Twp. Bd. of Zoning Appeals.
Stark County, No. 1995CA00018.

96-273. State v. Ross.
Columbiana County, No. 94C-56.

96-280. McVey v. Cincinnati.
Hamilton County, No. C-950189.
Stratton, J., not participating.

96-289. Stroup-Whittingham v. Kroger Co.
Franklin County, No. 95APE06-697.

96-291. Baker v. Aetna Cas. & Sur. Co.
Franklin County, No. 95APE05-63. Discretionary appeal and cross-appeal not
allowed.
F.E. Sweeney, J., would allow the cross-appeal.

Douglas and Stratton, JJ., would allow the appeal and cross-appeal.

96-307. Doe v. Blaney.
Hamilton County, No. C-950093.
Douglas, J., dissents.
Stratton, J., not participating.

96-314. State v. Jones.
Hamilton County, No. C-950005.
Douglas, J., dissents.
Stratton, J., not participating.

96-322. Christian v. Universal Veneer Mill Corp.
Licking County, No. 95CA53.
Douglas and Cook, JJ., dissent.

96-335. Jones v. Oldham.
Hamilton County, No. C-940401.

96-340. Friedman v. Fox.
Trumbull County, No. 95-T-5230.
Resnick, J., dissents.

96-353. Davis-Payne v. Miami Valley Hosp.
Montgomery County, Nos. 14747 and 15182.
Douglas and F.E. Sweeney, JJ., dissent.

96-362. State Auto. Mut. Ins. Co. v. Willis.
Miami County, No. 95CA40.
Stratton, J., dissents.

96-385. Natl. City Bank v. Mustric.
Franklin County, No. 95APE06-805.

96-405. State v. Brown.
Medina County, No. 2438-M.
Douglas and Stratton, JJ., dissent.

96-414. Ryan v. Terra Vista Estates, Inc.
Cuyahoga County, No. 68933.

96-430. State v. Woodruff.
Hamilton County, No. C-950344.

96-449. In re Petition for Annexation of 165.65 Acres More or Less from Falls
Twp. to Zanesville.
Muskingum County, No. CT-94-32.

96-466. State v. Blain.
Ashland County, No. 1119.

96-497. Am. States Ins. Co. v. Guillermin.
Montgomery County, No. 15259.

96-577. Schwertner v. Petronzio.
Geauga County, No. 95-G-1913.

96-609. State v. Habash.
Summit County, No. 17071.

96-618. Columbus v. Freeman.
Franklin County, No. 95APC06-797.

96-680. McKenney v. Hillside Dairy Co.
Cuyahoga County, No. 68392.
Resnick and F.E. Sweeney, JJ., dissent.

96-685. State v. Allen.
Lorain County, No. 94CA005944.

96-942. State v. White.
Athens County, No. 96CA1716.

96-974. State v. Collins.
Lorain County, No. 94CA05967.

96-1041. State v. Flora.
Geauga County, No. 94-G-1843.

96-1143. State v. Lewis.
Lawrence County, Nos. 1924 and 1943.

RECONSIDERATION DOCKET

94-2752 and 95-170. In re Adoption of Zschach.
Fairfield County, Nos. 1994CA14 and 1994CA19. Reported at ___ Ohio St.3d ___,
___ N.E.2d ___. On motion for reconsideration of Nan Barnebey and on motion for
reconsideration of Stephen Johnson. Motions denied.
Pfeifer, J., dissents.
Stratton, J., not participating.

95-1060. State v. Allard.
Knox County, No. 937. Reported at 75 Ohio St.3d 482, ___ N.E.2d ___. On motion
for reconsideration. Motion denied.
Stratton, J., not participating.

95-2461. State v. Taylor.
Ashtabula County, No. 93-A-1812. Reported at 75 Ohio St.3d 457, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

96-32. State v. Spears.
Preble County, No. CA95-07-016. Reported at 75 Ohio St.3d ___, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

96-76. State v. Kinsey.
Holmes County, No. CA-515. Reported at 75 Ohio St.3d 1494, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-84. Goldberg Cos., Inc. v. Richmond Hts. Council.
Cuyahoga County, Nos. 68291 and 68292. Reported at 75 Ohio St.3d 1484, ___
N.E.2d ___. On motion for reconsideration. Motion granted and discretionary
appeal allowed.

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

96-92. Newark v. Schumaker.

Licking County, No. 94CA00121. Reported at 75 Ohio St.3d 1484, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

96-118. Frazier v. Crown Temporary Serv., Inc.

Franklin County, No. 95APE10-1291. Reported at 75 Ohio St.3d 1484, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

96-158. Perrysburg v. Koenig.

Wood County, No. WD-95-011. Reported at 75 Ohio St.3d 1494, ___ N.E.2d _____. On
motion for reconsideration. Motion denied.

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

Resnick, J., not participating.

96-516. State v. Caslin.

Franklin County, No. 94APA11-1589. Reported at 75 Ohio St.3d 1482, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

96-640. State ex rel. Linton v. Ohio Adult Parole Auth.

In Mandamus. Reported at 75 Ohio St.3d 1493, ___ N.E.2d _____. On motion for
reconsideration. Motion denied.

96-660. State ex rel. Williams-Bey v. Doan.

In Prohibition. Reported at 75 Ohio St.3d 1473, ___ N.E.2d _____. On motion for
reconsideration. Motion denied.