

DRAFT

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10/15/97

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
October 15, 1997

MERIT DOCKET

97-1576. State ex rel. Bates v. Court of Appeals, Tenth Appellate Dist.

On complaint for writ of temporary injunction or alternative writ, and on motion to file out of rule. Sua sponte, cause dismissed.

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

97-1586. State ex rel. Minniefield v. Villanueva.

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.

97-1632. State ex rel. Reed v. Cox.

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.

97-1643. State ex rel. Guerra v. Court of Common Pleas of Miami Cty.

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.

97-1668. State ex rel. Proctor v. Moser.

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.

97-1699. State ex rel. Lyons v. Walters.

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.

97-1746. State ex rel. New 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 Lundberg Stratton, JJ., concur.

97-1758. State ex rel. Scruggs v. Barlos. 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.

97-1787. State ex rel. Berthelot v. Deszo. In Mandamus. On motion for issuance of peremptory writ or motion for issuance of alternative writ, and on motion to dismiss of Carol J. Deszo. Motion to dismiss sustained. Cause dismissed.

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

97-1815. State ex rel. Guerra v. Court of Common Pleas of Miami Cty.

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.

97-1909. Wise v. Collins. In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1945. Scudder v. State. In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1948. Raimor v. Leonard. In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1994. Washington v. Mitchell. In Habeas Corpus. Sua sponte, cause dismissed.

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

MOTION DOCKET

95-1279. State ex rel. Yellow Freight Sys., Inc. v. Indus. Comm. Franklin App. No. 94APD06-823. On request for oral argument. Request denied.

96-1596. State ex rel. The Miami Student v. Miami Univ.

In Mandamus. On motion for stay of decision and writ pending appeal to United States Supreme Court. Motion denied.

Douglas and Lundberg Stratton, JJ., dissent.

On request for payment of attorney fees and costs. Motion granted.

Douglas, J., would grant fees and costs per respondent's memorandum.

Lundberg Stratton, J., would deny fees and costs.

97-1231. State ex rel. Tubbs Jones v. Suster.

In Prohibition. On request for oral argument. Request granted.

Resnick and Cook, JJ., dissent.

97-1819. State v. Zanders.

Summit App. No. 18302. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

97-1858. State v. Barker.

Franklin App. No. 95APA09-1209. On motion for leave to file delayed appeal. Motion denied.

97-1860. State v. Rhoden.

Pike App. No. 96CA589. On motion for leave to file delayed appeal. Motion granted.

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

97-1867. State v. Long.

Cuyahoga App. No. 70739. On motion for leave to file delayed appeal. Motion denied.

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

97-1925. State v. Thompson.

Cuyahoga App. No. 72641. On motion for stay. Motion denied.

97-1926. State v. Houston.

Cuyahoga App. No. 72383. On motion for stay. Motion denied.

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

97-933. State v. Hawthorne.

Hamilton App. No. C-960225.

97-1025. State v. Jones.

Lucas App. No. L-95-265.

Resnick, J., not participating.

97-1391. Garrett v. Sandusky.

Erie App. No. E-96-047.

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

97-1404. State v. Hollis.

Cuyahoga App. No. 70781.

97-1413. State v. Davis.

Hamilton App. No. C-970068.

97-1416. State v. Martin.
Shelby App. No. 17-97-04.

97-1419. State v. Guess.
Franklin App. No. 94APA09-1278.

97-1445. Am. Aggregates Corp. v. Clay Twp.
Montgomery App. Nos. 16310 and 16311.
Moyer, C.J., dissents.

97-1448. State v. Morgan.
Franklin App. No. 96APA11-1513.

97-1449. State v. Irizarry.
Cuyahoga App. No. 71664.

97-1455. Brady v. Brady.
Montgomery App. No. 16213.

97-1456. Northeast Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of
Commrs.
Cuyahoga App. No. 70370.
Moyer, C.J., F.E. Sweeney and Pfeifer, JJ., dissent.

97-1458. State v. Powers.
Franklin App. No. 96APA11-1573.

97-1462. State v. Owens.
Montgomery App. No. 16089.

97-1465. State v. World.
Hamilton App. No. C-970239.

97-1470. State v. Shontee.
Montgomery App. No. 16560.

97-1473. State v. Guess.
Franklin App. No. 94APA09-1278.

97-1478. State v. Goudy.
Knox App. No. 96CA25.

97-1479. Sheets v. Carmel Farms, Inc.
Franklin App. Nos. 96APE09-1224 and 96APE09-1225. (Appeal of
Larry E. Sheets et al., and cross-appeal of John J. Terry and
Carmel Farms, Inc.)
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1483. State v. Bailey.
Hancock App. No. 5-97-01.
Pfeifer, J., dissents.

97-1485. State v. Griffin.
Cuyahoga App. No. 71420.

97-1490. State v. Taggart.
Butler App. No. CA96-09-175.

97-1493. Hensley v. Toledo Area Regional Transit Auth.
Lucas App. No. L-96-097.

97-1496. State v. Smith.
Cuyahoga App. No. 72590 and 72591.

97-1498. State v. Shears.
Allen App. No. 1-97-19.

97-1499. State v. Love.
Hamilton App. No. C-960498.

97-1500. State v. Love.
Hamilton App. No. C-960499.
Moyer, C.J., dissents.

97-1503. Guess v. Chief of Police.
Franklin App. No. 96APE12-1656.

97-1505. In re Andrew C.
Lucas App. No. L-96-373.

97-1508. Forsyth v. Forsyth.
Clark App. No. 97CA0071.

97-1509. Kestella v. Kestella.
Delaware App. No. 96CAF03013.

97-1511. State v. Qualls.
Clark App. No. 96CA68.

97-1515. Ohio Valley Bank v. Copley.
Pike App. No. 96CA582. (Appeal of Cliff and E. Marie Browning,
and cross-appeal of Ohio Valley Bank.)
Moyer, C.J., and Douglas, J., dissent.

97-1518. Clough v. Wilson.
Cochocton App. No. 96CA27.

97-1521. Childs v. Childs.
Butler App. No. CA96-08-163.
Lundberg Stratton, J., dissents.

97-1524. State v. Dingus.
Madison App. No. CA96-12-061.

97-1525. State v. Martz.
Guernsey App. No. 96CA27.

97-1527. State v. Frederick.
Warren App. No. CA97-01-005.

97-1532. Harris, McClellan, Binau & Cox v. Elkins.
Franklin App. No. 96APE12-1634.

97-1534. State v. Dukes.
Cuyahoga App. No. 71138.
Pfeifer, J., dissents.

97-1536. Green v. Prouty.
Muskingum App. No. CT960050.

97-1537. State v. Fellows.
Cuyahoga App. No. 70900.

97-1541. Wozniak v. Tonidandel.
Cuyahoga App. Nos. 70110 and 70633.

97-1542. State v. Allen.
Franklin App. No. 97APA04-537.

97-1546. O'Neal v. Schear's Metro Markets, Inc.
Montgomery App. No. 16218.

97-1553. State v. Chambers.
Hamilton App. No. C-960935.

97-1554. State v. Waddy.
Franklin App. No. 96APA07-863.
Moyer, C.J., and Douglas, J., dissent.
Lundberg Stratton, J., not participating.

97-1555. State v. Girts.
Cuyahoga App. Nos. 69570 and 69762.

97-1557. Fallang v. Fallang.
Butler App. No. CA96-08-156.

97-1558. State v. Jarvis.
Franklin App. No. 96APC09-1191.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-1561. Green v. Prouty.
Muskingum App. No. CT960050.

97-1566. State v. Kanawalsky.
Meigs App. No. 96CA26.

97-1574. Cogdell v. Rhodes.
Hamilton App. No. C-960870.

97-1575. State v. Hatcher.
Franklin App. No. 96APA12-1706.

97-1581. Harding v. Conrad.
Franklin App. No. 96APE11-1592.
Lundberg Stratton, J., dissents.

97-1590. State v. Cruz.
Cuyahoga App. No. 71090.

97-1591. Butler Cty. Transp. Improvement Dist. v. Tracy.
Butler App. Nos. CA97-02-036 and CA97-02-037.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

97-1592. State v. Newlin.
Franklin App. No. 97APA01-78.

97-1593. State v. Martin.
Cuyahoga App. No. 70874.
Moyer, C.J., and Resnick, J., dissent.

97-1599. State v. Blackshaw.
Cuyahoga App. No. 70829.

97-1611. State v. Sutorius.
Hamilton App. No. C-960547.

97-1612. State v. Trapp.
Cuyahoga App. No. 71469.

97-1614. State v. White.
Hamilton App. No. C-960506.

97-1617. State v. McCarty.
Summit App. No. 18442.

97-1619. Rumer v. Neuman Industries, Inc.
Allen App. No. 1-96-92.
Moyer, C.J., would allow and hold the cause for the decision
in 97-1577, Gomez v. Case Farms of Ohio, Inc., Holmes App. No.
96CA562.
97-1625. State v. Goodman.
Cuyahoga App. No. 71315.

97-1641. State v. Dever.
Hamilton App. No. C-960596.

97-1660. State v. Stepp.
Crawford App. No. 3-97-6.

97-1662. McGee v. Goodyear Atomic Corp.
Pike App. No. 96CA576.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1695. State v. Stevens.
Summit App. No. 16582.

97-1757. State v. Zamora.
Wood App. No. WD-84-075.
Resnick, J., not participating.

DISCRETIONARY APPEALS ALLOWED

97-1431. Cefaratti v. Mason Structural Steel Co.
Cuyahoga App. No. 70971. Sua sponte, cause held for the decision
in 97-317, Lexie v. Ohio Edison Co., Trumbull App. No. 96-T-5384;
briefing schedule stayed.

97-1502. Freshwater v. Scheidt.
Paulding App. No. 11-96-10.
Moyer, C.J., and Cook, J., dissent.

97-1516. Balatgek v. State Farm Ins. Co.
Franklin App. No. 96APE12-1619.
Lundberg Stratton, J., dissents.

97-1535. Falke v. Cubby Drilling, Inc.
Stark App. No. 1996CA00346. Sua sponte, cause held for the
decision in 96-1788, Ruckman v. Cubby Drilling, Inc., Portage
App. No. 95-P-0115, et al.; briefing schedule stayed.

97-1626. Chamberlain v. AK Steel Corp.
Butler App. No. CA97-04-074.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

97-1434. State v. Guess.
Franklin App. No. 94APA09-1278.

97-1439. Ragone v. Sentry Ins. Co.
Cuyahoga App. No. 69503. On motion for admission pro hac vice of
Thomas F. Lucas. Motion denied.

97-1450. State v. Semenchuk.
Cuyahoga App. No. 70084.
Moyer, C.J., Douglas and Resnick, JJ., dissent.

97-1459. Lamb v. Carver.
Cuyahoga App. No. 70673.

97-1467. In re Contempt of Lusnia.
Cuyahoga App. Nos. 70312 and 70313.
Moyer, C.J., and Douglas, J., dissent.
Cook, J., not participating.

97-1492. Karnavas v. Lakewood Hosp. Assn.
Cuyahoga App. No. 70685.
Douglas and Resnick, JJ., dissent.

97-1501. State v. Gullate.
Montgomery App. No. 16011.
Douglas, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

97-1504. State v. Mason.
Marion App. No. 9-96-70.
Pfeifer, J., dissents.

97-1506. In re Special Grand Jury Investigation Concerning
Organic Technologies, Inc.
Licking App. No. 96CA155.
Douglas, Pfeifer and Lundberg Stratton, JJ., dissent.

97-1523. MDS Dev. Corp. v. Professional Serv. Industries.
Stark App. No. 1996CA00353.

97-1528. Summers v. Summers.
Washington App. No. 96CA46.

97-1538. Shay v. Parkfield, Inc.
Butler App. No. CA96-11-251.

97-1539. State v. Brite.
Athens App. No. 96CA1778.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1547. Dycoco v. Guernsey Mem. Hosp.
Guernsey App. No. 96CA34.
Moyer, C.J., and Douglas, J., dissent.

97-1548. Musilli v. Blakley.
Richland App. No. 96872.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1550. Cassidy v. Pfeiffer.
Franklin App. No. 96APE10-1432.
Pfeifer, J., dissents.

97-1556. Cleveland Constr., Inc. v. Ohio Dept. of Adm. Serv.
Franklin App. No. 96APE05-686.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-1559. ABM Farms, Inc. v. Woods.
Fairfield App. Nos. 95CA074, 96CA20 and 96CA7.

97-1562. State v. Letts.
Montgomery App. No. 15681.
Douglas and Lundberg Stratton, JJ., dissent.

97-1563. Maier v. Norton.
Summit App. No. 18002.
Pfeifer, J., dissents.

97-1564. Church v. Rondy & Co., Inc.
Summit App. No. 18037.
F.E. Sweeney, J., dissents.

97-1571. Daniels v. Bethesda, Inc.
Hamilton App. No. C-960934.
Moyer, C.J., dissents.

97-1577. Gomez v. Case Farms of Ohio, Inc.
Holmes App. No. 96CA562. (Appeal of Case Farms of Ohio, Inc.,
and appeal of Administrator, Ohio Bureau of Workers'
Compensation.)
Moyer, C.J., would allow and hold this cause for the
decision in 97-1619, Rumer v. Neuman Industries, Inc., Allen App.
No. 1-96-92.
Lundberg Stratton, J., would allow.

97-1578. Jawhari v. Pizza Hut.
Cuyahoga App. No. 71830.

97-1666. Breen v. H & K, Inc.
Cuyahoga App. No. 71018.

97-1727. Feller v. Isler.
Geauga App. No. 96-G-2012.

RECONSIDERATION DOCKET

89-2169. Disciplinary Counsel v. Koury.
Reported at 80 Ohio St.3d ___, ___ N.E.2d ___. On motion for
reconsideration. Motion denied.
Douglas and F.E. Sweeney, JJ., dissent.

97-275. State v. Wagner.
Hamilton App. No. C-960312. Reported at 79 Ohio St.3d 1490, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

97-972. State ex rel. R.T.G., Inc. v. Ohio Dept. of Natural
Resources.
Franklin App. No. 95APE05-662. Reported at 79 Ohio St.3d 1482,
___ N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., and Pfeifer, J., dissent.

97-985. Afjeh v. Judson.
Lucas App. No. L-96-254. Reported at 79 Ohio St.3d 1482, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

97-1010. Miami Valley Hosp. v. Combs.
Montgomery App. No. 16178. Reported at 79 Ohio St.3d 1491, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
F.E. Sweeney, J., dissents.

97-1066. State v. Brabson.
Pike App. No. 96CA571. Reported at 79 Ohio St.3d 1484, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

96-1085. Naething v. Court of Appeals, Richland Cty.
In Procedendo. Reported at 79 Ohio St.3d 1479, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

97-1155. State v. Pinnock.
Hamilton App. No. C-950882. Reported at 79 Ohio St.3d 1485, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
97-1230. State v. Parks.
Clark App. No. 96CA99. Reported at 79 Ohio St.3d 1487, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Pfeifer and Lundberg Stratton, JJ., dissent.