

DRAFT

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09/17/97

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY

September 17, 1997

MERIT DOCKET

97-1211. State ex rel. Frank R. Recker & Assoc. Co., L.P.A. v. Montgomery.

In Mandamus. On motion for issuance of peremptory writ, answer of respondent, and motion for judgment on pleadings. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Cook and Lundberg Stratton, JJ., would grant the motion for judgment on the pleadings and dismiss the cause.

97-1280. State ex rel. Hill v. Ohio Adult Parole Auth.

In Mandamus. On motion to dismiss and on notice of irregularity. Motion to dismiss sustained. Cause dismissed.

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

97-1350. State ex rel. Smith v. Saffold.

In Mandamus. On answer of respondent and on motion for summary judgment. 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.

97-1363. State ex rel. Sproat v. Twelfth Dist. Court of Appeals.

In Procedendo. 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.

97-1364. State ex rel. Ellis v. Court of Common Pleas of Lucas Cty.

In Procedendo. On motion to dismiss and answer of respondent. Motion to dismiss sustained. Cause dismissed.

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

97-1380. State ex rel. Marsh v. Court of Common Pleas of Lucas Cty.

In Procedendo. On motion to dismiss and answer of respondent. Motion to dismiss sustained. Cause dismissed.

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

Lundberg Stratton, J., would also grant costs.

97-1401. State ex rel. Parks v. Second Dist. Court of Appeals.

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.

97-1407. D'Mello v. Common Pleas Court Montgomery Cty., Civ. Div.

In Mandamus. On motion to dismiss of Common Pleas Court of Montgomery County, Ohio, Civil Division, and on motion to dismiss by Court of Appeals, Montgomery County. Motions to dismiss sustained. Cause dismissed.

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

97-1418. State ex rel. Palmer v. McQuade.

In Prohibition. On motion for hearing, motion to dismiss and answer of respondents Judge Richard B. McQuade, Judge Robert G. Wilson, and Lucas County Prosecutor, motion to dismiss of Attorney General Betty Montgomery, Board of Commissioners on Grievances and Discipline, and Lucas County Court of Appeals. Motions to dismiss sustained. Cause dismissed.

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

97-1495. State ex rel. Rasheed v. Wilkinson.

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.

97-1596. Smith v. Walker.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1635. Kinney v. Edwards.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1648. In re Boehm.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1698. Padgett v. Turner.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

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

97-1093. State v. Grimm.
Miami App. No. 96CA37.

97-1094. State v. Grimm.
Miami App. No. 96CA38.

97-1107. State v. Cox.
Cuyahoga App. No. 70259.
F.E. Sweeney, J., dissents.

97-1110. State v. Fuller.
Lorain App. No. 96CA006626.
Douglas, J., not participating.

97-1114. State v. Rogers.
Adams App. No. 96CA627.

97-1120. State v. Brown.
Clark App. No. 96CA92.

97-1122. State v. Schilling.
Delaware App. No. 97CAC03010.

97-1125. State v. Balditt.
Cuyahoga App. No. 70990.

97-1126. State v. Rini.
Cuyahoga App. No. 69489.

97-1132. State v. Bell.
Muskingum App. No. CT960033.

97-1133. State v. Golden.
Stark App. No. 96CA0337.

97-1134. State v. Mock.
Cuyahoga App. No. 72255.

97-1146. Carmen v. Link.
Logan App. No. 8-96-24.

97-1162. In re Estate of Sammartino.
Mahoning App. No. 97 C.A. 78.
Lundberg Stratton, J., dissents.

97-1169. State v. Gall.
Ashtabula App. No. 96-A-0036.

97-1170. State v. Cox.
Warren App. Nos. CA96-07-069 and CA96-08-075. (Appeal of Rex
Cox, appeal of Sherri K. Morgan.)
Pfeifer, J., dissents.

97-1174. Woomer v. Kitta.
Cuyahoga App. Nos. 70863 and 71049.

97-1179. State v. Beaver.
Trumbull App. No. 95-T-5354.

97-1180. State v. Green.
Montgomery App. No. 16133.

97-1182. Cinema Playhouse of Strongsville, Inc. v. Tracy.
Cuyahoga App. Nos. 70848, 70849 and 70850.
F.E. Sweeney, J., dissents.

97-1185. State v. Woodman.
Franklin App. No. 97APA04-499.

97-1186. Halim v. Elsamaloty.
Hamilton App. No. C-960366.

97-1189. State v. Lee.
Clinton App. No. CA96-09-015.

97-1192. State v. Archer.
Knox App. No. 96CA37.

97-1194. State v. Bynum.
Summit App. No. 17982.

97-1198. Smith v. Mancino.
Summit App. No. 17969.
Douglas and F.E. Sweeney, JJ., dissent.

97-1200. State v. Snoots.
Coshocton App. No. 96CA5.

97-1205. State v. Perry.
Trumbull App. No. 95-T-5315.

97-1206. State v. Ratcliff.
Cuyahoga App. No. 70445.

97-1207. State v. Nieves.
Cuyahoga App. No. 70645.

97-1208. State v. McQueen.
Cuyahoga App. No. 71457.

97-1209. State v. Reimsnyder.
Erie App. No. E-96-006.
Pfeifer, J., dissents.
Douglas, J., not participating.

97-1212. TWP, Inc. v. Coach & Motor Co.
Cuyahoga App. No. 71303.

97-1215. State v. Steeg.
Summit App. No. 17930.
Moyer, C.J., dissents.

97-1216. State v. Patterson.
Montgomery App. No. 15699.

97-1217. State v. Puhl.
Wood App. No. WD-96-059.

97-1218. Wicker v. King.
Allen App. No. 1-97-10.

97-1219. State v. Skeens.
Lawrence App. No. 95CA24.
Moyer, C.J., and Lundberg Stratton, JJ., dissent.

97-1221. State v. Cole.
Greene App. No. 96CA71.

97-1225. State v. Huff.
Cuyahoga App. No. 70996.

97-1228. State v. Dotson.
Franklin App. No. 96APA11-1522.
Lundberg Stratton, J., not participating.

97-1232. State v. Harvey.
Lake App. No. 95-L-192.
Moyer, C.J., dissents.

97-1233. State v. McDay.
Lucas App. No. L-96-027.
Resnick, J., not participating.

97-1234. State v. Newlin.
Franklin App. No. 96APA11-1484.

97-1235. State v. Mabry.
Franklin App. No. 96APA10-1374.

97-1241. Dellapina v. Grisez Bros. Realty, Inc.
Stark App. No. 1996CA00310.
Lundberg Stratton, J., dissents.

97-1243. Campbell v. Governor of the State of Ohio.
Franklin App. No. 96API11-1445.

97-1248. State v. Miller.
Defiance App. No. 4-97-3.

97-1253. ABM Farms, Inc. v. Woods.
Fairfield App. Nos. 95CA074, 96CA20 and 96CA7.

97-1256. State v. Austin.

Mahoning App. No. 95 C.A. 49.

97-1259. Canestri v. Canestri-Groene.
Hamilton App. No. C-960843.
Resnick, J., dissents.

97-1263. Jones v. Gen. Motors Corp.
Defiance App. No. 4-96-21.

97-1264. Snyder v. Lincoln Gen. Ins. Co.
Crawford App. No. 3-97-4.
Douglas, J., dissents.

97-1275. State v. Lillie.
Summit App. No. 17895.

97-1300. Lourdes K. v. Gregory Q.
Sandusky App. No. S-96-016.
Resnick, J., not participating.

97-1306. State v. Taylor.
Wayne App. No. 96CA0056.

97-1330. State v. Fox.
Wood App. No. WD-96-031.
Pfeifer, J., dissents.
Resnick, J., not participating.

97-1344. State v. Martin.
Clinton App. No. CA96-09-014.
Moyer, C.J., and Pfeifer, J., dissent.

97-1377. Georgeadis v. Dials.
Franklin App. No. 96APE11-1575.

MOTION DOCKET

96-1596. State ex rel. The Miami Student v. Miami Bd. of Trustees.
In Mandamus. On request for payment of attorney fees and costs and on motion to strike. Motion to strike denied and leave of ten days to respond granted.

97-567. Cope v. Metro Life Ins. Co.
Columbiana App. No. 95CO46. On motion for admission pro hac vice of Michael Malakoff, James Pietz, Howard Specter, David Manogue, and Joseph Kravec, Jr. Motion granted.
Cook, J., dissents.

97-714. Long Beach Assn., Inc. v. Jones.
Ottawa App. No. OT-96-032. On motion for leave to supplement the record. Motion granted.

97-851. State v. Dye.
Summit App. No. 17763. On motion to strike notice of appeal and memorandum in support of jurisdiction. Motion to strike denied as moot.

Douglas, J., would also grant twenty days to file.

Lundberg Stratton, J., would also grant thirty days to file.

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

In Prohibition. On motion to dismiss. Sua sponte, alternative writ granted.

Moyer, C.J., Pfeifer and Cook, JJ., dissent and would grant the motion to dismiss.

97-1312. State v. Cowans.

Clermont C.P. No. 96CR005394. On motion for leave to file delayed appeal. Motion granted.

97-1331. State ex rel. Schneider v. Kreiner.

In Mandamus. On answer of respondent, motion for summary judgment, motion for issuance of alternative writ, and motion for issuance of peremptory writ. Sua sponte, alternative writ granted.

97-1384. VFW Post 8586 v. Ohio Liquor Control Comm.

Ashland App. No. 96COA01167. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' Judgment Entry filed June 26, 1997:

"This cause comes before us upon appellee's motion to certify a conflict between our opinion in the within and opinions issued by other courts of appeals.

"Upon review, we find our opinion is in conflict with: Loom Lodge 1473 v. Liquor Control Commission (1994), 95 Ohio App.3d 109 [641 N.E.2d 1182], 3d District Court of Appeals; A.L. Post 0014 v. Liquor Control Commission (July 25, 1989), Ross Appellate #1482, unreported, 4th Appellate District; A.L. Post 0046 v. Liquor Control Commission (1996), 111 Ohio App.3d 795 [677 N.E.2d 384], 6th Appellate District, and Mills-Jennings of Ohio, Inc. v. Liquor Control Commission (1984), 16 Ohio App.3d 290 [16 OBR 321, 475 N.E.2d 1321], 10th Appellate District.

"The motion to certify conflict is sustained.

"Pursuant to App.R. 25(A), we certify the following issue of law to the Ohio Supreme Court for review and final resolution:

"Whether mere possession of gambling devices [on liquor permit premises] violates Ohio Adm.Code 4301:1-1-53."

Moyer, C.J., dissents.

Sua sponte, cause consolidated with 97-1383, infra.

97-1510. State v. Puls.

Cuyahoga App. No. 72404. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

Douglas, J., not participating.

97-1519. State v. Marbury.

Cuyahoga App. No. 72218. On motion for leave to file delayed appeal. Motion denied.

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

97-1520. State v. Metz.
Washington App. No. 96CA03. On motion for leave to file delayed
appeal. Motion granted.
Resnick, J., dissents.

97-1544. State v. Dye.
Richland App. No. 95CA81. On motion for leave to file delayed
appeal. Motion denied.
Moyer, C.J., dissents.

97-1551. State v. Gaines.
Franklin App. No. 96APA09-1230. On motion for leave to file
delayed appeal. Motion denied.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

97-1572. State v. Matthews.
Franklin App. No. 93AP-212. On motion for leave to file delayed
appeal. Motion denied.

97-1610. State v. Thomas.
Franklin App. No. 90AP-547. On motion for leave to file delayed
appeal. Motion denied.
Douglas and Pfeifer, JJ., dissent.

97-1687. Jancuk v. Jancuk.
Mahoning App. Nos. 94 C.A. 221, 95 C.A. 131, 95 C.A. 246, 95
C.A. 5, 96 C.A. 129, 96 C.A. 206 and 96 C.A. 258. On motion for
stay of court of appeals' judgment pending appeal. Motion
denied.

DISCRETIONARY APPEALS ALLOWED

97-1173. Keefe v. Youngstown Diocese of the Catholic Church.
Stark App. No. 1996CA00265.
F.E. Sweeney and Cook, JJ., dissent.

97-1197. State ex rel. Horvath v. State Teachers Retirement Bd.
Franklin App. No. 96APE08-983.
F.E. Sweeney, Pfeifer and Cook, JJ., dissent.

97-1383. VFW Post 8586 Robert L. Frank v. Ohio Liquor Control
Comm.
Ashland App. No. 96COA01167.
Douglas and Pfeifer, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

97-1027. Windham Foods, Inc. v. Fleming Cos., Inc.
Trumbull App. Nos. 96-T-5515 and 96-T-5519. (Appeal of Fleming
Companies, Inc. et al.; appeal of Charles N. Warren.)
Moyer, C.J., dissents.

97-1161. Davis v. Continental Ins. Co.
Franklin App. No. 96APE06-795.
Douglas and F.E. Sweeney, JJ., dissent.

97-1164. Wood v. Wood.

Hamilton App. No. C-960516.
Resnick, J., dissents.

97-1167. State v. Rock.
Hardin App. Nos. 6-97-10 and 6-97-9.
Lundberg Stratton, J., dissents.

97-1177. State v. Shields.
Cuyahoga App. Nos. 70682 and 70683.
Resnick and F.E. Sweeney, JJ., dissent.

97-1191. Ashland City School Dist. Bd. of Edn. v. Ashland City
Teachers Assn.
Ashland App. No. 96COA01195.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1199. Acord v. Speedee Centers South, Inc.
Scioto App. No. 96CA2450.

97-1201. Smith v. E.G. Baldwin & Assoc., Inc.
Franklin App. No. 96APE07-948.
Douglas, Resnick and Pfeifer, JJ., dissent.

97-1203. Wade v. Allstate Ins. Co.
Coshocton App. No. 96CA16.
F.E. Sweeney, J., dissents.

97-1238. Dickens v. Gen. Acc. Ins. Co.
Cuyahoga App. Nos. 71126 and 71423.

97-1258. Schafer v. Deszcz.
Ottawa App. No. OT96053.
Moyer, C.J., Pfeifer and Cook, JJ., dissent.

97-1267. Donovan v. Templeton.
Montgomery App. No. 16204.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1315. In re Kaisk.
Summit App. No. 18069.

97-1352. Mangan v. Slanco.
Mahoning App. No. 96 C.A. 38.

RECONSIDERATION DOCKET

95-1992. Weiss v. Thomas & Thomas Dev. Co.
Cuyahoga App. Nos. 67508, 67509, 67515 and 67516. Reported at
79 Ohio St.3d 274, ____ N.E.2d _____. On motion for
reconsideration of Dry Hole National Petroleum Company et al.
Motion denied.

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

On motion for reconsideration of David Weiss as to
affirmance of court of appeals' granting summary judgment.
Motion denied.

Douglas, J., would grant only as to Harry Gempel.
Moyer, C.J., and Lundberg Stratton, J., dissent.

96-2656. Castle Nursing Homes, Inc. v. Sullivan.
Holmes App. No. 95CA541. Reported at 79 Ohio St.3d 230, ____
N.E.2d _____. On motion for reconsideration. Motion denied.
Cook, J., dissents.