

06/12/97

## SUPREME COURT OF OHIO

COLUMBUS

## ANNOUNCEMENT

THURSDAY  
June 12, 1997

## MOTION DOCKET

97-496. State v. McMullen.

On April 23, 1997, this court granted appellant's motion for leave to file a delayed appeal of the judgment entered by the Hamilton County Court of Appeals on January 8, 1997, in court of appeals No. C-960088. In the entry of April 23, 1997, this court ordered appellant to file a memorandum in support of jurisdiction within thirty days of the date of the entry. On May 29, 1997, it appeared from the records of this court that appellant had not filed a memorandum in support of jurisdiction, due May 23, 1997, in accordance with the Rules of Practice of the Supreme Court, and therefore this court dismissed this cause for failure to prosecute with the requisite diligence.

It has now come to the attention of this court that, on May 23, 1997, appellant did tender for filing a memorandum in support of jurisdiction in compliance with the Rules of Practice of the Supreme Court of Ohio; however, the memorandum inadvertently was not accepted for filing. Whereas the memorandum in support of jurisdiction has now been filed,

IT IS ORDERED by the court, sua sponte, that this court's order of May 29, 1997, is hereby vacated and this cause is hereby reinstated on the docket.

IT IS FURTHER ORDERED by the court, sua sponte, that appellee may file a memorandum in response within thirty days of this entry.

97-874. Cincinnati Bar Assn. v. Nienaber.

Upon consideration of the joint motion to continue oral argument currently scheduled for July 7, 1997,

IT IS ORDERED by the court that the motion to continue oral argument be, and hereby is, denied.

97-1052. Smith v. Smith.

Summit App. No. 17964. This cause is pending before the court as a discretionary appeal and claimed appeal of right. Upon consideration of appellant's motion for stay,

IT IS ORDERED by the court that the motion for stay be, and

hereby is, denied.

MISCELLANEOUS DISMISSALS

97-1147. State v. Scott.

Clark App. No. 95CA101. Appellant has filed an untimely appeal of the court of appeals' decision affirming the trial court's order revoking his probation, and a motion for delayed appeal. This appeal involves a civil, post-conviction matter and not an appeal of a felony case to which the provisions for delayed appeal in S.Ct.Prac.R. II(2)(A)(4), apply. Accordingly,

IT IS ORDERED by the court, sua sponte, that the motion for delayed appeal be, and hereby is, stricken.

IT IS FURTHER ORDERED by the court, sua sponte, that, in that appellant failed to perfect an appeal pursuant to S.Ct.Prac.R. II(2)(A)(1), this case be, and hereby is, dismissed for lack of jurisdiction.

97-1163. State ex rel. Martin Marietta Materials, Inc. v. McCracken.

In Prohibition. This cause originated in this court on the filing of a complaint for a writ of prohibition. Upon consideration of relator's application for dismissal,

IT IS ORDERED by the court that the application for dismissal be, and hereby is, granted.

ACCORDINGLY, IT IS FURTHER ORDERED by the court that this cause be, and hereby is, dismissed.