

02/26/97

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

February 26, 1997

MERIT DOCKET

96-2348. State ex rel. Martin v. Anderson.
Richland App. No. 96CA43. On motion to strike appellant's merit brief. Motion granted; sua sponte, cause dismissed.

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

96-2719. State ex rel. Brantley v. Eighth Judicial Court of Appeals.

In Mandamus. Sua sponte, cause dismissed.

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

96-2753. State ex rel. Smith v. Court of Appeals, Eleventh App. Dist.

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.

96-2780. State ex rel. King v. Bond.

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.

96-2816. State ex rel. Wilson v. Lucas Cty. Court of Common Pleas.

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.

96-2823. State ex rel. Bob Evans Farms, Inc. v. Plunkett.

In Mandamus. On motion for leave to intervene by Carl Wilkenfeld, James R. Jump, and Mary V. Fellabaum. Motion granted as to Wilkenfeld only.

Resnick, J., not participating.
On motion for leave to supplement complaint. Motion granted.
Resnick, J., not participating.
On answer of respondent. Answer treated as motion to dismiss.
Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.
Resnick, J., not participating.

96-2878. State ex rel. Sterling v. Mead.
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.

96-2883. State ex rel. Harrison v. Wilkinson.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-21. ALLTEL Ohio, Inc. v. Pub. Util. Comm.
Public Utilities Commission, No. 95-845-TP-COI. On motion to
dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.
Resnick, J., not participating.

97-24. In re Comm. Investigation Relative to the Establishment
of Local Exchange Competition & Other Competitive Issues.
Public Utilities Commission, No. 95-845-TP-COI. On motion to
dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.
Resnick, J., not participating.

97-26. Cincinnati Bell Tel. Co. v. Pub. Util. Comm.
Public Utilities Commission, No. 95-845-TP-COI. On motion to
dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.
Resnick, J., not participating.

97-58. State ex rel. Jackson v. Wingard.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-88. Crim v. Turner.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-92. State ex rel. Jackson v. Wingard.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-158. State ex rel. Jones v. Ohio Adult Parole Auth.
In Mandamus and Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-165. Matthews v. Huffman.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-199. Tanner v. Coyle.
In Habeas Corpus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-319. State ex rel. ALLTEL Ohio, Inc. v. Pub. Util. Comm.
In Mandamus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.
Resnick, J., not participating.

97-324. State ex rel. Cincinnati Bell Tel. Co. v. Pub. Util.
Comm.
In Mandamus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.
Resnick, J., not participating.

97-328. State ex rel. GTE N., Inc. v. Pub. Util. Comm.
In Mandamus. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.
Resnick, J., not participating.

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

96-2501. Nozik v. Sanson.
Cuyahoga App. Nos. 69948 and 70198.

96-2513. In re Guardianship of Edwards.
Ross App. No. 95CA2134. (Appeal by Robert H. Diebert, second
appeal by Cincinnati Insurance Co.)
Moyer, C.J., and Lundberg Stratton, JJ., dissent.

96-2518. State v. Franke.
Medina App. No. 2490-M.

96-2519. Sommer v. French.
Lorain App. No. 96CA006338.

96-2555. State v. Stewart.
Franklin App. No. 96APA07-902.

96-2557. State v. Trummer.
Columbiana App. No. 95CO15.

Lundberg Stratton, J., dissents.

96-2566. State v. Blankenship.
Butler App. No. CA96-05-098.

96-2570. State v. Creighton.
Stark App. No. 1996CA0257.

96-2576. State v. Berg.
Montgomery App. No. 15313.

96-2582. Vignal v. Cleveland Clinic Found.
Cuyahoga App. No. 69603.

Resnick, J., dissents.

96-2583. In re Guardianship of Edwards.
Ross App. No. 95CA2149.

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

96-2587. Benedict v. Cooper Tire & Rubber Co.
Lucas App. No. L-96-022.

Resnick, J., not participating.

96-2588. Hartley v. Marion Steel Co.
Marion App. No. 9-96-30.

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

96-2604. Robb v. Lincoln Publishing (Ohio), Inc.
Brown App. No. CA95-04-007. Discretionary appeal and cross-
appeal denied.

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

96-2606. Kaderly v. Blumer.
Stark App. No. 1996CA00022.

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

96-2610. Fiorentino v. Lightning Rod Mut. Ins. Co.
Summit App. No. 17728. Discretionary appeal and cross-appeal
denied.

Moyer, C.J., dissents.

Cook, J., not participating.

96-2611. Beare v. Gates.
Preble App. No. CA95-12-027.

96-2618. Neely v. Mifflin Twp.
Franklin App. No. 96APE03-283.

96-2619. State v. Tomkins.
Clark App. No. 95CA0099.

96-2621. State v. Engle.
Greene App. No. 96CA123.
96-2622. State v. Jaffel.
Cuyahoga App. No. 69568.

96-2636. Loreto Dev. Co. v. Chardon.
Geauga App. Nos. 95-G-1920 and 95-G-1923.

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

96-2645. State v. Trammell.
Lorain App. No. 96CA006288.

96-2648. McDonald v. Dalheim.
Lake App. Nos. 95-L-199 and 95-L-200.

96-2650. State v. Chapman.
Clark App. No. 95CA80.

96-2651. Titus v. Marzocco.
Clermont App. No. CA96-02-026.

96-2658. State v. Gooding.
Montgomery App. No. 15080.

96-2662. State v. Mansfield.
Lorain App. No. 96CA006517.

96-2663. State v. Cohen.
Summit App. No. 18122.

96-2665. Bell v. Horton.
Ross App. No. 95CA2170.
Pfeifer, J., dissents.

96-2666. State v. Burke.
Wayne App. No. 96CA0007.
Douglas, J., dissents.

96-2667. State v. Bontrager.
Hardin App. No. 6-95-16.
Douglas, Pfeifer and Lundberg Stratton, JJ., dissent.

96-2668. State v. Bontrager.
Hardin App. No. 6-95-17.
Douglas, Pfeifer and Lundberg Stratton, JJ., dissent.

96-2669. KEM Invest., Inc. v. Jackson Twp. Bd. of Zoning
Appeals.
Stark App. No. 1995CA00281.

96-2676. State v. Broomfield.
Franklin App. No. 96APA04-481.

96-2677. State v. Jordan.
Clinton App. No. CA96-05-007.

96-2680. Weatherbee v. Carpenter.
Knox App. No. 95CA14.
Moyer, C.J., and Lundberg Stratton, JJ., dissent.

96-2685. State v. Bowersock.
Stark App. No. 1995CA00418.
Lundberg Stratton, J., dissents.

96-2687. State v. Jackson.
Hamilton App. No. C-960692.

96-2691. State v. Barnes.
Hamilton App. No. C-950784.

96-2697. State v. Brown.
Cuyahoga App. No. 70185.

96-2699. State v. Beavers.
Cuyahoga App. No. 69963.
Lundberg Stratton, J., dissents.

96-2701. State v. Tankersley.
Cuyahoga App. Nos. 70068 and 70069.
Pfeifer and Lundberg Stratton, JJ., dissent.

96-2703. Pool v. Wade.
Lucas App. No. L-95-315.
Douglas and Pfeifer, JJ., dissent.
Resnick, J., not participating.

96-2709. Blackburn v. Lauder.
Lawrence App. No. 96CA5.

96-2728. Tabernacle of Prayer Church v. Columbus.
Franklin App. No. 96APE05-608.
Douglas and Pfeifer, JJ., dissent.

96-2758. State v. Britton.
Hamilton App. No. C-960745.

96-2795. State v. Castilleja.
Lucas App. No. L-95-049.
Resnick, J., not participating.

96-2847. State v. Glass.
Lorain App. No. 96CA006315.

96-2849. Cockrell v. Russell.
Warren App. No. CA96-07-071.

97-86. State v. Smith.
Hamilton App. No. C-910939.

MOTION DOCKET

92-405. State v. Hawkins.
Hamilton App. Nos. C-9200092 and C-910017. On motion to set
execution date. Motion granted.

F.E. Sweeney, J., dissents.

94-1143. State v. Robinette.
Montgomery App. No. 14074. On motion for further briefing and
oral argument. Motion granted.

Douglas, Cook and Lundberg Stratton, JJ., dissent.

95-397. St. Marys Foundry Co. v. Indus. Comm.

Franklin App. No. 93APD11-1515. On request for oral argument. Request denied.

F.E. Sweeney, J., dissents.

95-2066. DeRolph v. State.

Perry App. No. CA-477. On motion for leave to file additional materials. Motion denied.

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

96-1165. State ex rel. Gannett Satellite Information Network v. Shirey.

In Mandamus. On request for oral argument. Request denied.

96-1362. State ex rel. Longacre v. Penton Publishing Co.

Cuyahoga App. No. 70455. On motion for attorney fees. Motion granted in the amount of \$2,096.25.

Resnick and Pfeifer, JJ., dissent.

96-1627. State v. Tucker.

Shelby App. No. 17-95-10. On motion for appointment of counsel Thomas A. Ballato. Sua sponte, motion remanded to the court of appeals for appointment of counsel.

96-1630. State ex rel. The Logan Daily News v. Jones.

In Mandamus. On relator and respondent's request for oral argument. Request denied.

96-2654. Cambridge Arms, Ltd. v. Hamilton Cty. Bd. of Revision. Board of Tax Appeals, No. 94-P-1129. On motion to dismiss of Hamilton County Auditor. Motion denied.

Cook, J., dissents.

96-2655. Cambridge Arms II, Ltd. v. Hamilton Cty. Bd. of Revision.

Board of Tax Appeals, No. 94-P-1130. On motion to dismiss of Hamilton County Auditor. Motion denied.

Cook, J., dissents.

96-2656. Castle Nursing Homes, Inc. v. Sullivan.

Holmes App. No. 95CA541. On motion for supersedeas bond. Motion denied.

96-2852. Pegan v. Cramwer.

Licking App. No. 94CA106. On motion to dismiss. Motion denied.

97-22. State v. Richardson.

Lorain App. No. 95CA006109. On motion for leave to file delayed appeal. Motion denied.

97-31. State v. Young.

Lucas App. No. L-95-288. On motion for leave to file delayed appeal. Motion granted.

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

97-44. State v. King.

Cuyahoga App. No. 68726. On motion for leave to file delayed appeal. Motion granted.

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

97-183. Kenneth Hall Realty Co. v. Noel.
Stark App. No. 1996CA00075. On motion for stay of court of
appeals' judgment. Motion denied.

97-250. State v. Williams.
Butler App. Nos. CA96-09-180 and CA96-09-181. On motion to
expedite. Motion denied.

DISCRETIONARY APPEALS ALLOWED

96-2620. Grace v. Koch.
Hamilton App. No. C-950802.
Douglas, Cook and Lundberg Stratton, JJ., dissent.

96-2642. Fort Frye Teachers Assn., OEA/NEA v. State Emp.
Relations Bd.
Washington App. No. 95CA33. (Appeal by State Employment
Relations Board; second appeal by Fort Frye Local School
District Board of Education; cross-appeal of Fort Frye Teachers
Association, OEA/NEA, and Michael Rauch.)
Resnick, F.E. Sweeney and Cook, JJ., dissent.

96-2702. Hoppes Builders & Dev. Co. v. Hurren Builders, Inc.
Clark App. No. 96CA23.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-2706. In re Washington.
Cuyahoga App. No. 69283.
Resnick and Pfeifer, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

96-2491. Gleason v. Zimmerman.
Belmont App. No. 95-B-4.

96-2534. McClure v. McClure.
Greene App. No. 95CA86.

96-2550. Bryan v. Babb.
Williams App. No. WM-95-028.
Douglas and F.E. Sweeney, JJ., dissent.
Resnick, J., not participating.

96-2579. Lippert v. Univ. of Cincinnati.
Franklin App. No. 96API03-349.

96-2580. Ohio Univ. v. Ohio Civ. Rights Comm.
Athens App. No. 96CA1721.
Douglas and Resnick, JJ., dissent.

96-2607. Coons v. Clark.
Trumbull App. No. 96-T-5440.
Douglas, J., dissents.

96-2613. Akron Cellular Tel. Co. v. Hudson Village.
Summit App. No. 17681.

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

96-2617. Feeney v. Ohio Dept. of Pub. Safety.
Franklin App. No. 96APE04-430.

96-2627. Anderson v. Union Camp Corp.
Tuscarawas App. No. 96AP030024.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-2628. Buckler v. Hoffert.
Hamilton App. No. C-950813.

96-2629. State Farm Mut. Auto. Ins. Co. v. Reinhart.
Seneca App. Nos. 13-96-21 and 13-96-22.
Douglas and Pfeifer, JJ., dissent.

96-2635. Horwath v. Smith.
Lake App. No. 96-L-050.
Douglas, J., dissents.

96-2637. State v. Ward.
Cuyahoga App. No. 70308.
Resnick, J., dissents.

96-2643. Burton v. Trimble.
Muskingum App. No. 964.
Lundberg Stratton, J., dissents.

96-2647. Vieland v. Commodore Realty Assoc., Ltd.
Summit App. No. 17743.

96-2649. Mikesell v. Muskingum Livestock Sales Co.
Muskingum App. Nos. CT960002 and CT960003.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

96-2664. Thomson v. Univ. of Cincinnati College of Medicine.
Franklin App. No. 96API02-260.

96-2674. Haynes v. Kaiser.
Geauga App. No. 96-G-1984.

96-2693. Burke v. Schaffner.
Franklin App. No. 96APE04-507.

96-2705. Jones v. Poland.
Richland App. No. 95CA49.

96-2747. State v. Gamble.
Hamilton App. No. C-960071.

96-2811. State v. Noland.
Montgomery App. No. 15579.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

RECONSIDERATION DOCKET

96-1094. State ex rel. Crabtree v. Franklin Cty. Bd. of Health.

Franklin App. No. 96APD01-70. Reported at 77 Ohio St.3d 247, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-2168. Karnes v. Karnes.

Athens App. No. 95CA1666. Reported at 77 Ohio St.3d 1514, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-2180. Gentzler Tool & Die Corp. v. Green.

Summit App. No. 17633. Reported at 77 Ohio St.3d 1514, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., and Douglas, J., dissent.

96-2188. Barnes v. Center Assoc. Realty Corp.

Columbiana App. No. 95C01. Reported at 77 Ohio St.3d 1524, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

96-2190. Cleveland v. Trzebuckowski.

Cuyahoga App. No. 69478. Reported at 77 Ohio St.3d 1515, ___ N.E.2d ___. On motion for reconsideration. Motion granted; sua sponte, discretionary appeal allowed.
F.E. Sweeney and Cook, JJ., dissent.

96-2199. Alsip v. Klosterman Baking Co.

Hamilton App. No. C-950721. Reported at 77 Ohio St.3d 1525, ___ N.E.2d ___. On motion for reconsideration by Klosterman Baking Company, Inc., and on motion for reconsideration by Administrator, Ohio Bureau of Employment Services. Motions denied.
Lundberg Stratton, J., dissents.

96-2203. Eitel v. Eitel.

Pickaway App. No. 95CA11. Reported at 77 Ohio St.3d 1525, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas, J., dissents.

96-2260. Kleve v. Wenstrup.

Hamilton App. No. C-950422. Reported at 77 Ohio St.3d 1516, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-2271. Snyder-Forsyth v. Forsyth.

Clark App. No. 95CA106. Reported at 77 Ohio St.3d 1517, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-2292. State Farm Mut. Auto. Ins. Co. v. Reinhart.

Seneca App. Nos. 13-94-38 and 13-94-39. Reported at 77 Ohio St.3d 1525, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas and F.E. Sweeney, JJ., dissent.

96-2299. Walsh v. Indus. Powder Coatings, Inc.

Huron App. No. H-95-073. Reported at 77 Ohio St.3d 1517, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., and Lundberg Stratton, JJ., dissent.
Resnick, J., not participating.

96-2321. State v. Faller.

Licking App. No. 96CA01. Reported at 77 Ohio St.3d 1518, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

96-2333. Zukowski v. Testa.

Franklin App. No. 96APH03-358. Reported at 77 Ohio St.3d 1518,
____ N.E.2d _____. On motion for reconsideration and on second
motion for reconsideration. Motions denied.

96-2357. Guess v. Landefeld.

Fairfield App. Nos. 96CA37, 96CA39, 96CA40 and 96CA45. Reported
at 77 Ohio St.3d 1518, ____ N.E.2d _____. On motion for
reconsideration. Motion denied.

96-2392. Lucas, Prendergast, Albright, Gibson & Newman v.
Zschach.

Franklin App. No. 95APE12-1663. Reported at 77 Ohio St.3d 1519,
____ N.E.2d _____. On motion for reconsideration. Motion denied.

96-2400. Davis v. Sam's Club.

Cuyahoga App. No. 69647. Reported at 77 Ohio St.3d 1526, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

96-2401. Kremer v. Cox.

Summit App. Nos. 17370 and 17394. Reported at 77 Ohio St.3d
1519, ____ N.E.2d _____. On motion for reconsideration. Motion
denied.

Cook, J., not participating.