

THE STATE OF OHIO, APPELLANT, v. DAVIS, APPELLEE.

[Cite as *State v. Davis* (1998), ___ Ohio St.3d ___.]

Criminal law — Sentencing — Court of appeals' judgment reversed on authority of State v. Rush.

(No. 98-993 — Submitted September 15, 1998 — Decided October 28, 1998.)

APPEAL and CROSS-APPEAL from the Court of Appeals for Ashland County, No. 96COA01196.

Robert P. DeSanto, Ashland County Prosecuting Attorney, and *John L. Good*, Assistant Prosecuting Attorney, for appellant.

David H. Bodiker, State Public Defender, and *Kevin Fahey*, Assistant Public Defender, for appellee.

The discretionary appeal is allowed.

The discretionary cross-appeal is denied.

The judgment of the court of appeals is reversed on the authority of *State v. Rush* (1998), 83 Ohio St.3d 53, 697 N.E.2d 634.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.