

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
November 4, 1998

MERIT DOCKET

98-1700. State v. Trent.

Allen App. No. 1-98-3. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). See *State v. Rush* (1998), 83 Ohio St.3d 53, 697 N.E.2d 634. This cause is therefore dismissed.

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

98-1864. State ex rel. Anderson v. Scioto Cty. Probate Court.

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.

98-1867. State ex rel. Sevayega v. Russo.

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.

98-1904. State ex rel. Raypole v. Mengel.

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.

98-1939. State ex rel. Gonzalez v. McGough.

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.

98-1946. State ex rel. Burnett v. Barber.

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.

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

98-1264. State v. Call.

Montgomery App. No. 4728.

98-1601. State v. McKee.

Trumbull App. No. 97-T-0036.

98-1603. Zengler v. Smith.

Stark App. No. 97CA0399.

Moyer, C.J., would allow on Propositions of Law Nos. I and II.

Pfeifer, J., would allow.

98-1604. State v. Mauri.

Ashtabula App. No. 97-A-0045.

98-1605. Swaney v. Syndicate Mgt., Inc.

Cuyahoga App. No. 73509.

98-1611. State v. Echols.

Hamilton App. No. C-970272.

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

98-1615. State v. Eubank.

Lucas App. No. L-97-1284.

Resnick, J., not participating.

98-1619. Lesiak v. Ohio Elections Comm.

Franklin App. No. 97APE10-1420.

98-1620. State v. Wilson.

Lorain App. No. 97CA006683.

98-1629. State v. Robbins.

Lucas App. No. L-97-1191.

98-1632. Pyles v. St. Marys.

Auglaize App. No. 2-98-7.

Douglas and Pfeifer, JJ., dissent.

98-1633. State v. Schiff.

Hamilton App. No. C-970542.

98-1637. State v. Lomax.

Sandusky App. No. S-97-024.

Moyer, C.J., dissents.

Resnick, J., not participating.

98-1638. State v. Boys.

Hamilton App. Nos. C-970556 and C-970557.

Lundberg Stratton, J., would allow on Proposition of Law No. I.

98-1642. State v. Dunlap.

Hamilton App. No. C-970117.

98-1643. State v. Scott.

Mahoning App. No. 94 C.A. 188.

98-1648. State v. Egart.

Ashtabula App. No. 96-A-0073.

Moyer, C.J., and Cook, J., dissent.

98-1650. In re Barcelo.

Geauga App. No. 97-G-2071.

Resnick, J., dissents.

98-1651. State v. Earle.

Lake App. No. 96-L-195.

98-1657. Bennett v. Fier.

Greene App. No. 97CA116.

98-1660. Wilson-Jones v. Caviness.

Franklin App. No. 97APE11-1564.

Douglas, J., dissents.

98-1665. State v. Starcic.

Cuyahoga App. No. 72742.

98-1666. State v. Trifilio.

Hamilton App. No. C-970681.

98-1667. State v. Santine.

Ashtabula App. No. 97-A-0025.

98-1676. Dopp v. S.E. Johnson Cos., Inc.

Lucas App. No. L-98-1024.

F.E. Sweeney, J., dissents.

Resnick, J., not participating.

98-1680. State v. Jackson.
Franklin App. No. 97APA12-1660.

98-1737. Scottsdale Ins. Co. v. Brock.
Butler App. No. CA98-04-072.
Moyer, C.J., dissents.

98-1745. State v. Wilson.
Hamilton App. No. C-970944.

98-1750. State v. Cook.
Crawford App. No. 3-98-01.
Moyer, C.J., dissents.

98-1806. State v. Broussard.
Hamilton App. No. C-970600.
Moyer, C.J., and Douglas, J., dissent.

MOTION DOCKET

97-2342. Wightman v. Consol. Rail Corp.
Erie App. No. E-97-001. On motion for admission *pro hac vice* of Arlin M. Adams for oral argument. Motion granted.

98-552. State v. Smith.
Lucas App. No. L-94-093. On motion for leave to supplement record.
Motion denied.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

98-597. State ex rel. Soukup v. Celebrezze.
Cuyahoga App. No. 72008. On motion to stay or hold in abeyance lower court proceedings. Motion denied.
Resnick and F.E. Sweeney, JJ., dissent.

98-1935. Denham v. New Carlisle.
Clark App. No. 98CA19. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 4 of the court of appeals' Decision and Entry filed August 26, 1998:

“Having determined that our May 22, 1998 decision in the present case conflicts with *Eiland* [*v. Coldwell Banker Hunter Realty* (Aug. 14, 1997), Cuyahoga App. No. 71369, unreported], *supra*, we hereby grant appellant’s motion requesting certification and certify the following issue to the Ohio Supreme Court:

“When a party purports to dismiss, voluntarily and without prejudice, less than all of the claims in the action, and all of the remaining claims have been adjudicated, are the orders adjudicating the remaining claims final orders that may be reviewed on appeal?”

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

98-1951. State v. Robinson.

Clark App. No. 97CA0073. On motion for leave to file delayed appeal. Motion denied.

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

98-1952. State v. Arnold.

Cuyahoga App. No. 72803. On motion for leave to file delayed appeal. Motion granted.

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

98-1953. State v. Simmons.

Franklin App. No. 97APA10-1310. On motion for leave to file delayed appeal. Motion denied.

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

98-1995. State v. Thompson.

Cuyahoga App. No. 74205. On motion for leave to file delayed appeal. Motion denied.

98-1996. State v. Thompson.

Cuyahoga App. No. 74206. On motion for leave to file delayed appeal. Motion denied.

98-2074. State ex rel. Jones v. Preferred, Inc.

Franklin App. No. 97APD08-1031. On motion for stay of court of appeals’ judgment. Motion denied.

DISCRETIONARY APPEALS ALLOWED

98-1338. Harris v. Liston.

Cuyahoga App. No. 72244.

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

Peggy Bryant, J., of the Tenth Appellate District, sitting for Cook, J.

98-1607. Hillyer v. State Farm Ins. Co.

Lake App. No. 97-L-031.

Lundberg Stratton, J., would allow on Proposition of Law No. I only.

Moyer, C.J., and Cook, J., dissent.

98-1674. Sheffield v. Browning-Ferris Industries of Ohio, Inc.

Lorain App. No. 97CA006847.

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

DISCRETIONARY APPEALS NOT ALLOWED

98-1602. State v. DeCapite.

Lake App. No. 97-L-111.

98-1606. DePugh v. Merrilat Industries, Inc.

Jackson App. No. 97CA801.

Moyer, C.J., dissents.

98-1610. Zolg v. Hargrave.

Hamilton App. No. C-970461.

Lundberg Stratton, J., dissents.

98-1614. Hague v. Stephen J. Lewis, M.D., Inc.

Hamilton App. No. C-970481.

Lundberg Stratton, J., dissents.

98-1621. Ashley v. Snyder.

Wood App. No. WD-97-103.

98-1622. Toledo Police Patrolman's Assn. Local 10, IUPA, AFL-CIO-CLC v. Toledo.

Lucas App. No. L-97-1392.

Cook and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.

98-1623. Cutts v. Canton.

Stark App. No. 1997CA00405.

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

98-1626. State v. Watley.

Hamilton App. No. C-970452.

98-1636. McKee v. Siemens Energy & Automation, Inc.

Lucas App. No. L-97-1177.

98-1640. LaGrange Twp. Bd. of Trustees v. Pogacsnik.

Lorain App. No. 97CA006803.

98-1641. State v. Rector.

Montgomery App. No. 16527.

98-1644. Prudoff v. Lorain.

Lorain App. No. 97CA006837.

Douglas, J., dissents.

98-1649. State v. Sampsill.

Pickaway App. No. 97CA17.

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

98-1654. Painesville Twp. Bd. of Trustees v. Painesville.

Lake App. No. 97-L-090.

Lundberg Stratton, J., would allow on Proposition of Law No. I.

Moyer, C.J., and Pfeifer, J., would allow.

98-1659. Davis v. LTV Steel Co.

Trumbull App. Nos. 97-T-0184 and 97-T-0185.

98-1685. Smith & Johnson Constr. Co. v. Ohio Dept. of Transp.
Franklin App. No. 97APE10-1401.
Resnick, J., dissents.

98-1689. Fricano v. McLaughlin.
Columbiana App. No. 95C8.

98-1767. Sommer v. Heritage Mut. Ins. Co.
Erie App. No. E-98-008.
Resnick, J., dissents.

RECONSIDERATION DOCKET

97-1814. Lancaster v. Fairfield Cty. Budget Comm.
Board of Tax Appeals, Nos. 96-D-1241 and 96-D-1242. Reported at 83 Ohio St.3d 242, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

97-2175. Visicon, Inc. v. Tracy.
Board of Tax Appeals, Nos. 96-M-414 and 96-M-415. Reported at 83 Ohio St.3d 211, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-1191. Indus. Comm. v. Dayton Walther Corp.
Franklin App. Nos. 97APE06-746, 97APE06-747, 97APE06-748 and 97APE06-749. Reported at 83 Ohio St.3d 1429, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.
On *amicus curiae* motion for leave to file under S.Ct.Prac.R. XI.
Motion denied.

98-1305. Yonkings v. Wilkinson.
Franklin App. No. 97APE08-1083. Reported at 83 Ohio St.3d 1431, ___ N.E.2d ___. On motion for reconsideration. Motion granted and discretionary appeal allowed.
F.E. Sweeney and Cook, JJ., dissent.

98-1350. Pingue Properties, Inc. v. Enz, Jones & LeGrand.

Franklin App. No. 97APE11-1453. Reported at 83 Ohio St.3d 1436, ____
N.E.2d _____. On motion for reconsideration. Motion denied.