

10/07/98

## SUPREME COURT OF OHIO

## COLUMBUS

## ANNOUNCEMENT

9:00 A.M.

WEDNESDAY  
October 7, 1998

## MERIT DOCKET

98-1397. State ex rel. Diagnostic & Behavioral Health Serv., Inc. v. Felton.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Pfeifer, J., dissents and would grant an alternative writ.

98-1582. State ex rel. Estate of Goodard v. Dix.  
In Mandamus and Prohibition. On motion to dismiss of Children's Hospital Medical Center, motion to dismiss of Mary Ann Dix and Marcia J. Mengel, motion to dismiss of Richard A. Niehaus and Ralph Winkler, and motion for hearing and sanctions pursuant to R.C. 2323.51. Motions to dismiss sustained and cause dismissed; motion for hearing and sanctions denied.

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

Resnick and Pfeifer, JJ., dissent in part and would grant an alternative writ as to Mary Ann Dix, Chief Deputy Clerk.

Lundberg Stratton, J., dissents in part and would grant an alternative writ as to Marcia J. Mengel, Clerk, and Mary Ann Dix, Chief Deputy Clerk.

98-1630. State ex rel. Love v. Coyne.

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.

98-1652. State ex rel. Howard v. Court of Appeals, Eighth Appellate Dist.

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.

98-1664. State ex rel. Chalfant v. Wray.

In Mandamus. On answer of Jerry Wray, answer of city of Westlake et al., and motion for injunctive relief. Sua sponte, cause dismissed.

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

98-1671. State ex rel. Watkins v. Crawford.

In Procedendo. 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.

98-1677. State ex rel. GMS Mgt. Co., Inc. v. Friedman.

In Mandamus and Prohibition. Sua sponte, cause dismissed.

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

98-1763. Foster v. Huffman.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-1768. Wilson v. Mohr.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-1823. Schilling v. State.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-1853. Pitts v. Ohio Adult Parole Auth.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-1866. Phillips v. Morgan.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-1889. Robinson v. Haskins.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-1895. Jones v. Russell.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-1901. Jordan v. Mohr.

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

98-841. State v. Jackson.  
Stark App. No. 97CA0100.

98-1144. Berdyck v. Shinde.  
Ottawa App. No. OT-97-050. (Appeal of H.B. Magruder Memorial  
Hospital and cross-appeal of Donna C. Berdyck.)  
Moyer, C.J., and Lundberg Stratton, J., dissent.  
Resnick, J., not participating.

98-1145. Shaker Hts. v. Al-Gureshi.  
Cuyahoga App. No. 72562.

98-1172. State v. Merriweather.  
Lorain App. No. 97CA006993.

98-1173. In re Hart.  
Cuyahoga App. No. 71783.

98-1199. State v. Jackson.  
Wayne App. No. 97CA0043.

98-1200. State v. Jackson.  
Wayne App. No. 97CA0037.

98-1210. State v. Robbins.  
Licking App. No. 97CA000138.

98-1212. Columbus v. Link.  
Franklin App. No. 97APC09-1215.

98-1220. State v. Hanes.  
Sandusky App. No. S-98-018.  
Resnick, J., not participating.

98-1226. Doe v. Doe Corp.  
Lucas App. No. L-97-1136.  
Pfeifer and Cook, JJ., dissent.  
Resnick, J., not participating.

98-1238. State v. Bruchac.  
Ottawa App. No. OT-97-011.  
Moyer, C.J., Pfeifer and Cook, JJ., dissent.

98-1247. State v. Bishop.  
Summit App. No. 18564.

98-1250. State v. Kirkbride.  
Wayne App. No. 98CA0018.

98-1263. State v. Garrett.  
Montgomery App. No. 16563.

98-1278. State v. Hedgecock.  
Fayette App. No. CA97-08-022.

98-1279. State v. Higgins.  
Montgomery App. No. 16743.

98-1282. State v. Evans.  
Hamilton App. No. C-970661.

98-1283. State v. Williams.  
Hamilton App. Nos. C-980299 and C-980304.

98-1312. State v. Rawls.  
Cuyahoga App. No. 72051.  
Douglas and Pfeifer, JJ., dissent.

98-1315. State v. Pless.  
Cuyahoga App. No. 72281.

98-1328. Ross v. Ohio Bar Liab. Ins. Co.  
Stark App. No. 1997CA00397.  
Pfeifer, J., dissents.

98-1330. United Electrical Radio & Mach. v. State Emp.  
Relations Bd.  
Cuyahoga App. No. 72168.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

98-1335. Smith v. Ohio Dept. of Rehab. & Corr.  
Ross App. No. 97CA2353.

98-1337. Garcia v. Bailey.  
Montgomery App. No. 16646.

98-1345. State v. Myles.  
Cuyahoga App. No. 72690.

98-1349. State v. Losey.  
Athens App. No. 97CA43.

98-1351. State v. Thompson.  
Montgomery App. No. 16692.

98-1352. State v. Fleming.  
Licking App. No. 97CA133.

98-1355. Jones v. State.  
Cuyahoga App. No. 74504.

98-1356. State v. Budd.  
Warren App. No. CA98-01-012.

98-1357. State v. Smith.  
Allen App. No. 1-97-71.

98-1360. State v. Furlow.  
Montgomery App. No. 16403.

98-1362. Latimore v. Ohio Unemp. Comp. Review Comm.  
Stark App. No. 1998CA0123.

98-1365. State v. Hensley.  
Butler App. No. CA98-03-046.

98-1366. State v. Anderson.  
Cuyahoga App. No. 72929.

98-1367. State v. Napier.  
Medina App. No. 2671-M.

98-1369. State v. Moran.  
Wayne App. No. 97CA0044.

98-1371. State v. Knaff.  
Hamilton App. No. C-970162.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

98-1376. State v. Patterson.  
Trumbull App. No. 96-T-5439.

98-1377. State v. Angle.  
Holmes App. No. 98CA010.

98-1388. State v. Patterson.  
Cuyahoga App. No. 74470.

98-1394. State v. Curtis.  
Stark App. No. 97CA286.

98-1400. State v. Lewis.  
Lawrence App. No. 97CA51.

98-1410. State v. Allen.  
Cuyahoga App. No. 72427.  
Lundberg Stratton, J., would allow on Propositions of Law  
Nos. I, II, III, and V.

98-1414. State v. Lundgren.  
Lake App. No. 97-L-196.

98-1419. State v. Hariston.  
Franklin App. No. 97APA08-1132.

98-1426. State v. Watts.  
Cuyahoga App. No. 72863.

98-1434. State v. Harris.  
Franklin App. Nos. 97APA07-955 and 97APA07-956.

98-1437. State v. Favors.  
Fairfield App. No. 97CA54.  
Cook, J., dissents.

98-1443. In re Brookover.

Morrow App. No. 854.

98-1448. State v. Rogers.  
Cuyahoga App. Nos. 72736 and 72737.

98-1450. Cook v. Demosthene.  
Van Wert App. No. 15-98-1.

98-1454. State v. King.  
Cuyahoga App. No. 72892.

98-1457. State v. Woolum.  
Ross App. No. 97CA2263.

98-1461. State v. Thompson.  
Cuyahoga App. No. 72641.

98-1468. State v. Baker.  
Vinton App. No. 97CA512.

98-1469. Farley v. Ohio Dept. of Rehab. & Corr.  
Franklin App. No. 97API11-1487.  
Resnick and Lundberg Stratton, JJ., dissent.

98-1485. Depugh v. Ohio Dept. of Commerce, Div. of Real Estate.  
Ross App. No. 97CA2350.  
Moyer, C.J., and Douglas, J., dissent.

98-1488. State v. Raines.  
Hamilton App. No. C-980419.

98-1501. State v. Wogenstahl.  
Hamilton App. No. C-970238.

98-1541. State v. Emerick.  
Montgomery App. No. 15768.

98-1548. State v. Rogers.  
Hamilton App. No. C-970190.

98-1555. State v. Smith.  
Summit App. No. 16910.

98-1559. Smith v. Smith.  
Fairfield App. No. 97CA79.  
Moyer, C.J., dissents.

98-1571. State v. Finley.  
Clark App. No. 96CA30.  
Douglas, J., dissents.

98-1575. State v. Bonner.  
Hamilton App. No. C-930202.

98-1587. State v. Williams.  
Butler App. No. CA97-08-162.

98-1598. State v. Hanks.  
Franklin App. No. 98AP-70.

98-1609. State v. Warren.  
Summit App. No. 12686.  
Pfeifer and Lundberg Stratton, JJ., dissent.

98-1617. State v. Miller.  
Logan App. No. 8-98-5.  
Lundberg Stratton, J., dissents.

98-1715. State v. Salazar.  
Hamilton App. No. C-950047.

98-1722. State v. Gorman.  
Hamilton App. No. C-840707.

#### MOTION DOCKET

98-1464. State v. Kelly.  
Medina App. No. 2670-M. On motion for appointment of counsel.  
Motion denied.  
Resnick and Lundberg Stratton, JJ., dissent.

98-1478. State ex rel. Grove v. Nadel.  
Hamilton App. No. C-970324. On motion to supplement record.  
Motion denied.  
98-1513. State v. Pack.  
Pike App. No. 93CA525. On motion for leave to file delayed  
appeal. Motion denied.

98-1672. Bowersock v. Bowersock.  
Allen App. No. 1-98-10. On motion for stay of common pleas  
court proceedings. Motion denied.

98-1681. State v. Emerick.  
Montgomery App. No. 15768. On motion for leave to file delayed  
appeal. Motion denied.  
Pfeifer, J., dissents.

98-1682. State v. Webb.  
Clermont App. No. CA91-08-053. On motion for appointment of  
counsel. Motion denied.  
Pfeifer, J., dissents.

98-1701. State v. Hamlin.  
Lorain App. No. 98CA007072. On motion for leave to file delayed  
appeal. Motion denied.  
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

98-1708. State v. Holly.  
Cuyahoga App. No. 72818. On motion for leave to file delayed  
appeal. Motion denied.  
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

98-1710. State v. Childs.  
Hamilton App. No. C-961134. On motion for leave to file delayed

appeal. Motion denied.

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

98-1732. State v. Trent.

Allen App. No. 1-98-3. On motion for leave to file delayed appeal. Motion denied.

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

98-1752. State v. Castaneda-Diaz.

Cuyahoga App. No. 71160. On motion for leave to file delayed appeal. Motion denied.

98-1757. Sharwell v. Wimberly.

Cuyahoga App. No. 73299. On motion for stay. Motion denied.

98-1766. State v. Brown.

Hamilton App. No. C-980047. On motion for leave to file delayed appeal. Motion denied.

98-1770. State v. Scott.

Cuyahoga App. No. 68907. On motion for leave to file delayed appeal. Motion denied.

98-1789. State v. Buckley.

Stark App. No. CA8212. On motion for leave to file delayed appeal. Motion denied.

98-1790. Brown v. Brown.

Franklin App. No. 97APF11-1514. On motion for stay. Motion denied.

98-1805. State v. Hawkins.

Franklin App. No. 97APA06-740. On motion for leave to file delayed appeal. Motion denied.

98-1844. State v. Hoover.

Franklin App. No. 97APA10-1399. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated with 98-1432, infra, and held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-1859. State v. Lowther.

Franklin App. No. 97APA09-1274. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated with 98-1628, infra, and held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

#### DISCRETIONARY APPEALS ALLOWED

98-1256. State v. Jones.

Athens App. No. 97CA42. Sua sponte, cause held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-1343. State v. Davis.

Franklin App. Nos. 97APA08-1020 and 97APA08-1021. Discretionary



appeal allowed on Proposition of Law No. I only; sua sponte, cause held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-1344. Stover v. State Farm Ins. Co.  
Seneca App. No. 13-98-12.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

98-1368. Lakewood v. Hartman.  
Cuyahoga App. No. 72622.  
Douglas, Resnick and Cook, JJ., dissent.

98-1427. State v. Dula.  
Hamilton App. No. C-970504. Sua sponte, cause held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-1432. State v. Hoover.  
Franklin App. No. 97APA10-1399. Sua sponte, cause consolidated with 98-1844, supra, and held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-1460. Headley v. Ohio Govt. Risk Mgt. Plan.  
Muskingum App. No. CT970022.  
Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

98-1628. State v. Lowther.  
Franklin App. No. 97APA09-1274. Sua sponte, cause consolidated with 98-1859, supra, and held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.  
DISCRETIONARY APPEALS NOT ALLOWED

98-1168. State v. Walker.  
Montgomery App. No. 16656.

98-1176. Columbus v. Abdalla.  
Franklin App. No. 97APC08-973.  
Cook, J., dissents.

98-1189. State v. Thompson.  
Cuyahoga App. No. 72044.

98-1243. State v. Wozniak.  
Lorain App. No. 97CA006716.

98-1261. State v. White.  
Cuyahoga App. No. 74403.

98-1281. Weinberger v. Weinberger.  
Hamilton App. No. C-970552. (Appeal of Cathy F. Weinberger.)

98-1295. Greenville v. Fortkamp.  
Darke App. No. 97CA1449.  
Moyer, C.J., dissents.

98-1306. State v. Delgado.  
Cuyahoga App. No. 72288.

98-1317. Wiant v. Springfield.  
Clark App. No. 97CA0069.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

98-1325. Harper v. Orlando Baking Co.  
Cuyahoga App. No. 72629.

98-1340. Carrington Farms Dev. Co. v. Pulte Home Corp.  
Lucas App. No. L-97-1300. On motion for admission pro hac vice  
of Stephen Wasinger. Motion denied.  
98-1348. Rak-Ree Ent., Inc. v. Timmons.  
Pickaway App. No. 97CA24.

98-1361. Guess v. Ohio Dept. of Rehab. & Corr.  
Franklin App. No. 98AP-476.

98-1364. In re Gary M.  
Lucas App. No. L-96-210.

98-1375. Davis v. Indus. Comm.  
Summit App. No. 18656.  
Resnick and Lundberg Stratton, JJ., dissent.

98-1380. State v. Blondheim.  
Summit App. No. 18594.

98-1381. Warren Cty. Combined Health Dist. v. Redmon.  
Warren App. No. CA97-06-064.

98-1383. State v. Denton-Boyer.  
Clermont App. No. CA97-11-096.

98-1389. Guess v. Attorney General.  
Franklin App. No. 97API11-1450.

98-1391. State v. Guess.  
Franklin App. No. 98AP-308.

98-1393. State v. Pierson.  
Montgomery App. No. 16440.  
Douglas, Pfeifer and Lundberg Stratton, JJ., dissent.

98-1423. Roach v. Unarco Industries, Inc.  
Cuyahoga App. No. 72572.  
Resnick and F.E. Sweeney, JJ., dissent.

98-1440. Comer v. Calim.  
Hamilton App. Nos. C-970603 and C-970635.  
Douglas and Pfeifer, JJ., dissent.

98-1441. Kemo v. St. Clairsville.  
Belmont App. No. 96-BA-78.  
Cook, J., dissents.

98-1447. Nicholson v. Log Sys., Inc.  
Montgomery App. No. 16672.

Moyer, C.J., dissents.

98-1449. Johnson v. Ohio Bur. of Emp. Serv.  
Cuyahoga App. No. 73591.

98-1489. Morley v. First Fed. S. & L. Assn. of Warren.  
Trumbull App. No. 97-T-0142.  
Moyer, C.J., dissents.

#### RECONSIDERATION DOCKET

97-641. Apel v. Katz.  
Cuyahoga App. No. 68294. Reported at 83 Ohio St.3d 11, \_\_\_\_  
N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-980. Columbus Civ. Serv. Comm. v. McGlone.  
Franklin App. Nos. 96APE08-1032 and 96APE08-1083. Reported at  
82 Ohio St.3d 569, \_\_\_\_ N.E.2d \_\_\_\_\_. On motion for  
reconsideration. Motion denied.  
Douglas, J., dissents.

97-1197. State ex rel. Horvath v. State Teachers Retirement Bd.  
Franklin App. No. 96APE08-983. Reported at 83 Ohio St.3d 67,  
\_\_\_\_ N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.  
Pfeifer, J., dissents.

97-1967. Chambers v. St. Mary's School.  
Geauga App. No. 96-G-2013. Reported at 82 Ohio St.3d 563, \_\_\_\_  
N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-2648. Cuyahoga Cty. Bar Assn. v. Okocha.  
Reported at 83 Ohio St.3d 3, \_\_\_\_ N.E.2d \_\_\_\_\_. On motion for  
reconsideration and motion to strike motion for reconsideration.  
Motions denied.

98-962. Earley v. Keenan.  
Cuyahoga App. No. 74334. Reported at 83 Ohio St.3d 1415, \_\_\_\_  
N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.

98-1000. State Dept. of Taxation v. Cohen.  
Cuyahoga App. No. 73705. Reported at 83 Ohio St.3d 1415, \_\_\_\_  
N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.

98-1039. In re Estate of Davis.  
Montgomery App. No. 16698. Reported at 83 Ohio St.3d 1415, \_\_\_\_  
N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.

98-1170. Estate of Glenn v. Lake Hosp. Sys., Inc.  
Lake App. No. 96-L-154. Reported at 83 Ohio St.3d 1419, \_\_\_\_  
N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.  
Douglas and Resnick, JJ., dissent.

98-1207. State ex rel. Williams v. Mengel.  
In Mandamus and Procedendo. Reported at 83 Ohio St.3d 1409, \_\_\_\_  
N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.

98-1289. State ex rel. Costakos v. Donchatz.  
In Mandamus. Reported at 83 Ohio St.3d 1409, \_\_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.

98-1336. State ex rel. Kleve v. Green Twp. Bd. of Trustees.  
In Mandamus. Reported at 83 Ohio St.3d 1409, \_\_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.

98-1398. State ex rel. Pilgrim v. Ohio Dept. of Rehab. & Corr.  
In Mandamus. Reported at 83 Ohio St.3d 1410, \_\_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Pfeifer, J., dissents.

98-1539. Russell v. Mitchell.  
In Habeas Corpus. Reported at 83 Ohio St.3d 1410, \_\_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.