

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

June 3, 1998

MERIT DOCKET

97-2448. State ex rel. Hullinger v. Leonard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-593. Miller v. Wiest.

In Prohibition. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Lundberg Stratton, J., dissents and would grant the writ.

98-614. State ex rel. Graham v. McMonagle.

In Prohibition. 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.

98-632. State ex rel. Pasturzak v. Harcha.

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.

98-656. State ex rel. Klostermeyer v. Fuerst.

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.

98-659. State ex rel. Giles v. Jorgensen-Martinez.

In Mandamus and 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.

98-681. State ex rel. Pohlable v. Ohio Dept. of Rehab. & Corr.
In Procedendo. On answer of respondents. Answer treated as
motion to dismiss. Motion to dismiss sustained. Cause
dismissed.

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

Douglas, J., would also grant the motion to amend.

98-702. State ex rel. Forsyth v. Brigner.
In Mandamus. On motion to dismiss of Judge Gerald F. Lorig,
motion to dismiss of Judge V. Michael Brigner and Second
District Court of Appeals. Motions to dismiss sustained. Cause
dismissed.

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

98-763. State ex rel. Klostermeyer v. Friedman.
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.

98-765. State ex rel. Valentine v. Ohio Adult Parole Auth.
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.

98-769. State ex rel. Klostermeyer v. Clerk of Courts.
In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.

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

Lundberg Stratton, J., dissents and would grant the writ.

98-852. Troutman v. Anderson.
In Habeas Corpus. Sua sponte, cause dismissed.

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

98-877. Cobb v. Anderson.
In Habeas Corpus. Sua sponte, cause dismissed.

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

98-887. Pless v. Anderson.
In Habeas Corpus. Sua sponte, cause dismissed.

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

98-905. Starks v. Anderson.
In Habeas Corpus. Sua sponte, cause dismissed.

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

98-915. Howe v. State.
In Habeas Corpus. On petition for writ of habeas corpus and on

motion for psychological/competency evaluation.

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

98-284. State v. Telthorster.
Licking App. No. 97CA87.

98-332. State v. Namish.
Trumbull App. No. 96-T-5578.
Moyer, C.J., dissents.

98-409. State v. Haendiges.
Lorain App. No. 96CA006558.

98-554. State v. Blackwell.
Franklin App. No. 96APA03-348.

98-567. Duncan v. Grubach Trucking.
Cuyahoga App. No. 71520.

98-596. State v. Sprenz.
Summit App. No. 18254.

98-607. Sandusky Marina L.P. v. Ohio Dept. of Natural
Resources.
Erie App. No. E-97-017.
Moyer, C.J., dissents.
Resnick, J., not participating.

98-608. State v. Boeddeker.
Hamilton App. No. C-970471. (Appeal of state of Ohio and cross-
appeal of Joe A. Boeddeker.)
Resnick, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

98-611. State v. Feltner.
Warren App. No. CA97-03-024.

98-615. State v. Jarvis.
Montgomery App. No. 16388.

98-617. Rak-Ree Ent., Inc. v. Timmons.
Pickaway App. No. 98CA03.

98-618. State v. Davis.
Cuyahoga App. No. 72063.
Resnick, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

98-621. State v. Smith.
Mahoning App. No. 96 C.A. 83.
Douglas and Pfeifer, JJ., dissent.

98-622. Nichols v. Ohio State Racing Comm.

Logan App. No. 8-97-33.
F.E. Sweeney, J., dissents.

98-629. State v. Hudson.
Summit App. No. 18363.

98-636. State v. Clark.
Montgomery App. No. 16290.

98-639. State v. Beavin.
Montgomery App. No. 16929.
Pfeifer, J., dissents.

98-641. Roth v. Cent. Farm Supply, Inc.
Wayne App. No. 97CA0035.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

98-646. State v. Edwards.
Clermont App. No. CA97-04-035.
Pfeifer, J., dissents.

98-647. Hogle v. Hogle.
Fairfield App. No. 97CA9.

98-648. Croom v. Mackey.
Cuyahoga App. No. 71135.

98-649. State v. Smith.
Cuyahoga App. No. 71974.

98-653. State v. Jenkins.
Erie App. No. E-97-057.
Resnick, J., dissents.

98-654. Rocco v. Fairview Park.
Cuyahoga App. No. 72263.
Resnick and F.E. Sweeney, JJ., dissent.

98-658. State v. Ralston.
Ross App. No. 97CA2287.

98-671. State v. Brewer.
Highland App. No. 95CA870.

98-676. State v. Jerido.
Cuyahoga App. No. 72327.

98-688. State v. Rutledge.
Montgomery App. No. 16577.
Pfeifer, J., dissents.

98-692. Loughran v. Kettering Mem. Hosp.
Montgomery App. No. 16636.

98-694. Ohio Civ. Rights Comm. v. Stanton.
Hamilton App. No. C-970296.

98-698. State v. Marshall.
Cuyahoga App. No. 73847.
Moyer, C.J., and Lundberg Stratton, J., dissent.

98-706. State v. Issa.
Hamilton App. No. C-970270.
Pfeifer, J., dissents.

98-710. State v. Scott.
Cuyahoga App. No. 66846.

98-722. State v. Scalf.
Cuyahoga App. No. 71910.
Douglas and F.E. Sweeney, JJ., dissent.

98-727. State v. Abreu.
Cuyahoga App. No. 70450.

98-767. State v. Bellish.
Mahoning App. No. 87 C.A. 78.

98-768. State v. Bickham.
Montgomery App. No. 16598.

98-778. State v. Sargent.
Butler App. No. CA97-05-097.

98-826. State v. Martin.
Lucas App. No. L-97-1326.

98-853. In re Gavin/Swain.
Franklin App. No. 97APF09-1165.

MOTION DOCKET

95-2131. State ex rel. Harsch v. Indus. Comm.
Franklin App. No. 94APD09-1382. On request for oral argument.
Request denied.

97-2039. E. Canton Edn. Assn. v. McIntosh.
Stark App. No. 96CA0293. On motion to strike merit and reply
briefs of East Canton Education Association et al. Motion
denied.

97-2118. Case W. Res. Univ. v. Tracy.
Board of Tax Appeals, No. 95-K-1280. On motion to strike fourth
merit brief. The motion to strike is granted only to the extent
that the first three propositions of law and Appendix pages A-1
through A-3 are stricken from the fourth merit brief filed by
CWRU.
Douglas, J., dissents and would grant the motion to strike.
Pfeifer, J., dissents and would deny the motion to strike.

97-2333. Ameritech Ohio v. Pub. Util. Comm.
Public Utilities Commission, No. 96-1175-TP-ORD. On motion to
dismiss. Motion denied.
Resnick, J., not participating.

97-2419. State ex rel. Ohio Academy of Trial Lawyers v. Sheward.

In Mandamus and Prohibition. On motion for admission pro hac vice of Theodore J. Boutrous, Jr. Motion granted.

98-547. State ex rel. McVay v. Indus. Comm.

In Mandamus. On answer of Johnson Manufacturing and on answer of Industrial Commission of Ohio. Sua sponte, alternative writ granted.

98-674. State v. Rykowski.

Franklin App. No. 97APA06-837. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated with 98-634, infra, and held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-687. State v. Kirkman.

Marion App. No. 9-97-69. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-766. State v. Brown.

Hamilton App. No. C-960715. On motion for leave to file delayed appeal. Motion denied.

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

98-770. State v. Marcum.

Butler App. Nos. CA91-04-068 and CA91-05-081. On motion for leave to file delayed appeal. Motion denied.

98-771. State v. Parks.

Montgomery App. No. 14906. On motion for leave to file delayed appeal. Motion denied.

98-774. Planet Earth Entertainment, Inc. v. Ohio Liquor Control Comm.

Franklin App. No. 97APE06-744. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' memorandum decision rendered on April 14, 1998, at pages 3-4:

"We conclude that our judgment in the present case is in conflict with a judgment pronounced upon the same question by another court of appeals of this state. More specifically, we find that the judgment of the Eighth District Court of Appeals in Cleveland's PM on the Boardwalk [Ltd. v. Ohio Liquor Control Comm. (Jan. 23, 1997), Cuyahoga App. No. 69779, unreported, 1997 WL 25522] is in conflict with our decision in the present case and we therefore grant appellee's motion to certify the conflict to the Supreme Court of Ohio. The precise question to be certified is as follows: `Whether the prohibition against semi-nude dancing in liquor establishments, enforced under Ohio Adm.Code 4301:1-1-52, unconstitutionally abridges the right of freedom of speech in violation of the First Amendment to the United States Constitution and Section

11, Article I, Ohio Constitution.'" "

Sua sponte, cause consolidated with 98-579, infra.

98-810. State v. Daniels.

Franklin App. No. 97APA06-830. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated with 98-669, infra, and held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-841. State v. Jackson.

Stark App. No. 97CA0100. On motion for leave to file delayed appeal. Motion granted.

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

DISCRETIONARY APPEALS ALLOWED

98-543. State ex rel. Sensel v. Leone.

Butler App. No. CA97-05-102. (Appeal of Dennis Leone and cross-appeal of Karen Sensel.)

Cook, J., dissents.

98-579. Planet Earth Entertainment, Inc. v. Ohio Liquor Control Comm.

Franklin App. No. 97APE06-744. Discretionary appeal allowed on Proposition of Law No. II only; sua sponte, cause consolidated with 98-774, supra.

Douglas, J., would also allow Proposition of Law No. I.

F.E. Sweeney and Pfeifer, JJ., would allow all propositions of law.

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

98-616. State v. Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., L.P.A.

Franklin App. No. 97APA03-429.

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

98-634. State v. Rykowski.

Franklin App. No. 97APA06-837. Discretionary appeal allowed on Proposition of Law No. I only; sua sponte, cause consolidated with 98-674, supra, and held for the decision in 97-1985, supra; briefing schedule stayed.

F.E. Sweeney, J., would allow all propositions of law.

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

98-651. State v. Bellman.

Hamilton App. No. C-970169. Discretionary appeal allowed; sua sponte, cause held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

Cook, J., dissents.

98-668. Stacy v. Nationwide Mut. Ins. Co.

Erie App. No. E-96-053.

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

98-669. State v. Daniels.

Franklin App. No. 97APA06-830. Discretionary appeal allowed; sua sponte, cause consolidated with 98-810, supra, and held for

the decision in 97-1985, supra; briefing schedule stayed.
Lundberg Stratton, J., dissents.

DISCRETIONARY APPEALS NOT ALLOWED

98-496. Third Fed. S. & L. Assn. v. Herman.
Cuyahoga App. No. 73629.

98-500. Tarver v. Callex Corp.
Mahoning App. No. 96 C.A. 149. On appeal of Callex Corporation
et al. Discretionary appeal denied.

Cook, J., would allow on Proposition of Law No. III and
hold this cause for the decisions in 97-1595, Genaro v. Cent.
Transport, Inc., Certified Question of State Law, Nos.
196CV2282, 197CV00598 and 197CV601; and 97-1962, Cheek v. Indus.
Powder Coatings, Inc., Certified Question of State Law, No.
396CV7771.

On cross-appeal of James Tarver and Robert K. Varner.
Discretionary cross-appeal denied.

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

98-580. State v. Hill.
Lorain App. No. 96CA006548.

98-600. Austin v. Payne.
Lorain App. No. 97CA006777.

98-619. Lunsford v. John R. Jurgensen Co.
Hamilton App. No. C-960886.
Pfeifer and Lundberg Stratton, JJ., dissent.

98-642. McGeorge v. Motorist Mut. Ins. Co.
Stark App. No. 1997CA00271.
Resnick and F.E. Sweeney, JJ., dissent.

98-655. First Am. Title Ins. Co. v. Haggins.
Cuyahoga App. No. 71877.
Douglas, J., dissents.

98-673. Welsh v. Sherwood.
Stark App. Nos. 1997CA00317 and 1997CA00323.
Douglas and Pfeifer, JJ., dissent.

98-685. Luke v. Luke.
Lake App. No. 97-L-044.
Moyer, C.J., dissents.

98-686. Kratzer v. Gen. Motors Corp.
Montgomery App. Nos. 16590, 16593 and 16594.
Douglas, J., dissents.

98-689. Crego v. Baldwin-Lima-Hamilton Corp.
Montgomery App. No. 16515.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

RECONSIDERATION DOCKET

95-1405. State ex rel. Hartness v. Indus. Comm.

Franklin App. No. 94APD06-885. Reported at 81 Ohio St.3d 445,
___ N.E.2d ___. On motion for reconsideration. Motion denied.
Cook and Lundberg Stratton, JJ., dissent.

97-685. Thomas v. Conrad.
Montgomery App. Nos. 15873 and 15898. Reported at 81 Ohio St.3d
475, ___ N.E.2d ___. On motion for reconsideration. Motion
denied.

98-223. Newark v. Zigo.
Licking App. No. 97CA00103. Reported at 81 Ohio St.3d 1511, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

98-279. Olson v. Deer Park.
In Mandamus. Reported at 81 Ohio St.3d 1510, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

98-280. State ex rel. White v. Tracey.
In Procedendo. Reported at 81 Ohio St.3d 1510, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

98-463. State ex rel. Simms v. Cuyahoga Cty. Dept. of Children
& Family Serv.
In Mandamus. Reported at 81 Ohio St.3d 1520, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.