

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
April 22, 1998

MERIT DOCKET

97-859. Utility Workers Union of Am., AFL-CIO v. Pub. Util. Comm.

Public Utilities Commission, No. 96-406-EL-COI. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Bryant, Cook and Lundberg Stratton, JJ., concur.

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

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

97-1031. Ohio Alliance for Affordable Power v. Pub. Util. Comm. Public Utilities Commission, No. 96-406-EL-COI. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Pfeifer, J., dissents.

Resnick, J., not participating.

98-279. Olson v. Deer Park.

In Mandamus. On motion to dismiss of Mark Schweikert, motion to dismiss of city of Deer Park, and motion to dismiss of John C. Murdock. Motions to dismiss sustained. Cause dismissed.

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

98-280. State ex rel. White v. Tracey.

In Procedendo. Sua sponte, cause dismissed.

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

98-316. State ex rel. Ross v. Cuyahoga 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.

98-321. State ex rel. Wynn v. Court of Appeals, Eighth Dist.
In Mandamus. On motion for issuance of peremptory writ and 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.

98-369. State ex rel. Dias v. Baird.
In Mandamus. On motion to dismiss of William Baird et al. and
on motion to dismiss of James E. Murphy. Motions to dismiss
sustained. Cause dismissed.

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

98-370. State ex rel. Knight v. Court of Appeals, Ninth Jud.
Dist.

In Mandamus. On motion to dismiss of Ninth District Court of
Appeals and on motion to dismiss of Ted Schneiderman. Motions
to dismiss sustained. Cause dismissed.

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

98-425. Tuberville v. Ohio Dept. of Corr.

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.

98-498. Morgan v. Tate.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-512. Overman v. Deters.

In Habeas Corpus. 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.

98-587. Penrod v. Bendolph.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-590. Jeffrey v. Leonard.

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

98-167. Ward v. Hengle.

Summit App. No. 18234. On appeal of Father John Hengle et al.
Appeal denied.

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

On cross-appeal of Brother Gabriel Ward. Cross-appeal denied.

Resnick and Lundberg Stratton, JJ., dissent.

98-170. State v. Staton.
Butler App. No. CA97-08-0156.

98-178. Boatmen's Natl. Mtge., Inc. v. Zageris.
Franklin App. No. 97APE04-503.

98-189. Castle Nursing Homes, Inc. v. Sullivan.
Holmes App. No. 95CA541.

98-214. State v. McDougall.
Cuyahoga App. No. 71276.

98-222. Middleton Twp. v. Gonyer.
Wood App. No. WD-97-024.

98-223. Newark v. Zigo.
Licking App. No. 97CA00103.

98-225. State v. McElfresh.
Licking App. No. 97CA25.

98-229. State v. McIntyre.
Summit App. No. 15348.

98-241. State v. Lewis.
Trumbull App. No. 96-T-5522.

98-243. State v. Payton.
Fayette App. No. CA97-04-009.

98-249. State v. Reed.
Summit App. No. 18076.

98-250. State v. Ramsey.
Clermont App. No. CA97-03-025.

Resnick and Lundberg Stratton, JJ., dissent and would allow the cause and hold it for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21.

98-253. State v. Weaver.
Montgomery App. No. 16850.

98-254. State v. Hunter.
Hamilton App. No. C-961142.

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

98-256. State v. Hill.
Washington App. No. 97CA21.

98-260. State v. Gunther.
Trumbull App. No. 96-T-5605.

F.E. Sweeney and Lundberg Stratton, JJ., dissent.

98-261. State v. Weaver.
Lorain App. No. 97CA006686.

98-262. Ohio Dept. of Taxation v. Johnson.
Jackson App. No. 96CA793.
Pfeifer, J., dissents.

98-264. State v. Weber.
Franklin App. No. 97APA03-323.
Resnick, J., dissents.
Lundberg Stratton, J., not participating.

98-265. Basinger v. Pilarczyk.
Hamilton App. No. C-961139.

98-268. Nusekabel v. Cincinnati Pub. School Emp. Credit Union,
Inc.
Hamilton App. No. C-970069.

98-270. Lewis v. Sisters of Mercy of Hamilton, Ohio.
Hamilton App. No. C-970010.
Pfeifer, J., dissents.

98-272. Warren ex rel. Bluedorn v. Hicks.
Trumbull App. No. 97-T-0008.
Lundberg Stratton, J., dissents.
Douglas, J., not participating.

98-275. Murray v. Mt. Washington Care Ctr.
Hamilton App. Nos. C-960654 and C-960664.
Douglas, J., dissents.

98-278. Wiley v. Gibson.
Hamilton App. No. C-970198.
Pfeifer, J., dissents.

98-282. Goff v. Key Trust Co. of Ohio.
Cuyahoga App. No. 71636.

98-285. Montague v. Montague.
Cuyahoga App. Nos. 71277, 71806 and 71807.
Lundberg Stratton, J., would allow Propositions of Law Nos.
I and II only.
Douglas, J., would allow.

98-291. Collins v. Grange Mut. Cas. Co.
Clinton App. No. CA97-02-002.
Lundberg Stratton, J., dissents.

98-292. State v. Williams.
Cuyahoga App. No. 72042.

98-295. State v. Martin.
Mahoning App. No. 96 C.A. 21.

98-297. State v. Lott.
Ashtabula App. No. 96-A-0011.

98-298. State v. Durst.
Trumbull App. No. 96-T-5563.

98-301. State v. Luna.
Montgomery App. No. 17012.

98-306. Ambrose v. Vollick.
Cuyahoga App. No. 71870.
Douglas, J., dissents.

98-308. State v. Oliver.
Trumbull App. No. 97-T-0014.

98-311. State v. Young.
Cuyahoga App. No. 71977.

98-317. State v. Lee.
Trumbull App. No. 95-T-5371.
Pfeifer, J., dissents.

98-318. State v. Jones.
Stark App. No. 1997CA00282.

98-320. Harmon v. Zitter.
Franklin App. No. 97APE04-532.

98-327. State v. Creasey.
Cuyahoga App. No. 73184.

98-336. Hover v. Warren.
Trumbull App. No. 97-T-0012.
Douglas, J., dissents.

98-341. State v. Fuqua.
Hardin App. No. 6-95-25.

98-343. State v. Boehm.
Montgomery App. No. 16335.

98-344. State v. Aziz.
Cuyahoga App. No. 64581.

98-351. State v. Brewer.
Cuyahoga App. No. 72159.

98-415. State v. Chenault.
Butler App. No. CA97-04-090.

98-475. State v. New.
Lake App. No. 93-L-160. On motion for stay. Motion denied.

98-476. State v. Lemaster.
Pickaway App. No. 96CA18.

MOTION DOCKET

95-1934. State ex rel. Roy v. Indus. Comm.
Franklin App. No. 94APD08-1268. On request for oral argument.
Request denied.

96-2819. State v. Hessler.
Franklin C.P. No. 95CR116906. On motion for continuation of
stay of execution. Motion denied.

On conditional motion to withdraw as counsel or request to
be relieved from briefing schedule. Conditional motion to
withdraw denied; leave to file granted to September 28, 1998.

97-52. State v. Hessler.
Franklin App. No. 96APA12-1664. On motion for continuation of
stay of execution. Motion denied.

On conditional motion to withdraw as counsel or request to
be relieved from briefing schedule. Conditional motion to
withdraw denied; leave to file granted to September 28, 1998.

97-158. State ex rel. Jones v. Ohio Adult Parole Auth.
In Mandamus. On motion for relief from judgment. Motion
denied.

97-1261 and 97-1488. Cater v. Cleveland.
Cuyahoga App. No. 70674. On motion to participate in oral
argument. Motion denied.

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

Cook, J., not participating.

On motion to participate in oral argument of Ohio Municipal
League and Ohio Municipal Attorneys Association. Motion
granted.

Pfeifer, J., dissents.

Cook, J., not participating.

97-2039. E. Canton Edn. Assn. v. McIntosh.
Stark App. No. 96CA0293. On motion to strike appellant's merit
brief. Motion denied.

97-2507. Perkins v. Wilkinson Sword, Inc.
Certified State Law Question, No. 964144. On request for oral
argument. Request denied.

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

98-173. Gupta v. Summit Cty. Bd. of Revision.
Board of Tax Appeals, No. 97-A-1152. On motion for leave to
supplement record. Motion denied.

98-205. State v. Yurchiak.
Medina App. No. 2684-M. On review of order certifying a
conflict. The court determines that a conflict exists. Sua
sponte, cause held for the decision in 97-1778, State v. Rush,
Stark App. No. 96CA419; briefing schedule stayed.

98-358. State v. Ramsey.
Clermont App. No. CA97-03-025. 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.

98-367. State v. Mayhew.

Jackson App. No. 619. On motion for leave to file delayed appeal. Motion denied.

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

98-396. State v. Davis.

Greene App. No. 97-CA-121. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

98-430. State v. Hunter.

Cuyahoga App. Nos. 70933 and 70934. On motion for leave to file delayed appeal. Motion denied.

Cook, J., dissents.

98-434. State v. Porter.

Summit App. No. 15098. On motion for leave to file delayed appeal. Motion denied.

98-441. State v. Merrill.

Wood App. No. WD-96-044. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 97-1778, State v. Rush, Stark App. No. 96CA419; briefing schedule stayed.

Resnick, J., not participating.

98-467. State v. Naegele.

Clermont App. No. CA97-04-043. 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.

98-478. State v. Holland.

Cuyahoga App. No. 70333. On motion for leave to file delayed appeal. Motion denied.

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

98-481. State v. Sleppy.

Darke App. No. 96CA1412. On motion for leave to file delayed appeal. Motion granted.

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

98-494. Selander v. Erie Ins. Group.

Darke App. No. 97CA1432. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue certified at pages 3-4 of the court of appeals' Decision and Final Judgment Entry rendered March 3, 1998:

"Do the provisions of R.C. 3937.18 apply to a policy of primary insurance which provides coverage for claims of liability arising out of the use of hired or non-owned automobiles, but is not issued for delivery with respect to some particular motor vehicle?"

The conflict case is Mauler v. Westfield Ins. Co. (Sept. 28, 1989), Franklin App. Nos. 88AP-914 and 88AP-915, unreported, 1989 WL 112342.

F.E. Sweeney, J., dissents.

98-496. Third Fed. S. & L. Assn. v. Herman.
Cuyahoga App. No. 73629. On motion for immediate stay of court
of appeals' judgment and to continue stay of trial court's
judgment. Motion denied.

Resnick and Lundberg Stratton, JJ., dissent.

DISCRETIONARY APPEALS ALLOWED

98-217. State v. Uskert.
Ashland App. No. 97COA01219.

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

98-235. O'Sullivan v. Provident Bancorp, Inc.
Hamilton App. No. C-970141.

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

98-289. Selander v. Erie Ins. Group.
Darke App. No. 97CA1432. Discretionary appeal allowed; sua
sponte, cause consolidated with 98-494, supra.

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

98-346. State v. Yurchiak.
Medina App. No. 2684-M. Sua sponte, cause consolidated with 98-
205, supra.

DISCRETIONARY APPEALS NOT ALLOWED

97-2042. Glover v. Boehm Pressed Steel Co.
Cuyahoga App. No. 71554.

97-2717. State v. Thomas.
Hamilton App. No. C-960242.

98-136. Vercellotti v. HVC-Daly, Inc.
Lucas App. No. L-97-1063. On appeal of Kellermeyer Company.
Appeal denied.

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

On cross-appeal of Claudia Y. Vercellotti. Cross-appeal
denied.

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

98-165. Wetterauer v. Justice.
Franklin App. No. 97APG07-891.

Lundberg Stratton, J., not participating.

98-177. Falcoski v. Fisher.
Cuyahoga App. No. 71828.

98-197. State v. Winston.
Scioto App. No. 96CA2419.

Lundberg Stratton, J., dissents.

98-218. Chapman v. Meinke.
Lucas App. No. L-97-1145.

98-224. Vanest v. Pillsbury Co.
Jackson App. No. 97CA800.

Douglas, J., dissents.

98-246. State v. Lovings.
Franklin App. No. 97APA05-656.

98-247. Sash & Storm, Inc. v. Thompson.
Allen App. No. 1-97-43.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

98-251. Rosser v. Terminix Internatl. Corp.
Hamilton App. No. C-961067.
Resnick, J., dissents.

98-252. A.P. O'Horo Co. v. Ohio Water Serv. Co.
Lake App. No. 96-L-206.

98-257. Gammell v. Strategic Mtge. Serv., Inc.
Montgomery App. No. 16531.

98-258. Columbus v. Justice.
Franklin App. Nos. 97APC03-450, 97APC03-451 and 97APC03-452.
Lundberg Stratton, J., not participating.

98-269. Martin v. Bedroom Emporium.
Summit App. No. 18509.

98-271. State v. Calloway.
Hamilton App. No. C-961088.

98-274. Leonard v. Bank One Youngstown, Ohio.
Mahoning App. No. 96 C.A. 42.
F.E. Sweeney, J., dissents.

98-283. Colvin v. Gorder.
Belmont App. No. 95BA54.
Pfeifer, Cook and Lundberg Stratton, JJ., would allow this cause and hold it for the decision in 97-707, Landis v. Grange Mut. Ins. Co., Erie App. No. E-96-034.

98-304. In re Jandrew.
Washington App. No. 97CA4.

98-307. Ohio Leitina Co. v. McCormack.
Cuyahoga App. No. 72127.

98-312. Secondine v. Didonato.
Tuscarawas App. No. 97AP030019.

98-313. Hensley v. New Albany Co. Ohio Gen. Partnership.
Franklin App. No. 97APE02-189.
F.E. Sweeney and Pfeifer, JJ., dissent.

98-314. Meadowbrook Mall Co. v. Rainbow USA, Inc.
Mahoning App. No. 96 C.A. 157.

98-315. State v. Gotham.
Trumbull App. No. 96-T-5485.
Lundberg Stratton, J., dissents.

98-319. Plessinger v. Cox.
Darke App. Nos. 1428 and 1429. (Appeal of Magan and Michelle Plessinger, cross-appeal of State Auto Insurance Company.)
Douglas, Cook and Lundberg Stratton, JJ., dissent.

98-322. Tilton v. Austintown Motors, Inc.
Columbiana App. No. 96C071.

98-331. United Tel. Co. of Ohio v. Williams Excavating, Inc.
Allen App. No. 1-97-7. (Appeal of United Telephone Company of Ohio and appeal of Bischoff & Associates.)
Douglas and Cook, JJ., dissent.

98-356. Cogar v. Scheetz Constr. Co.
Summit App. No. 18501.
Lundberg Stratton, J., dissents.

98-365. Foos v. Hydraulic Parts Store, Inc.
Tuscarawas App. No. 97AP020015.

RECONSIDERATION DOCKET

95-550. State ex rel. George v. Internal Revenue Serv.
In Mandamus. Reported at 81 Ohio St.3d 1465, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

96-84. Goldberg Cos., Inc. v. Richmond Hts. City Council.
Cuyahoga App. Nos. 68291 and 68292. Reported at 81 Ohio St.3d 207, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.

96-1777. Fidelholtz v. Peller.
Stark App. No. 1995CA00340. Reported at 81 Ohio St.3d 197, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Douglas, Cook and Lundberg Stratton, JJ., dissent.

96-2227. Pipe Fitters Union Local 392 v. Kokosing Constr. Co.
Hamilton App. Nos. C-950220 and C-950234. Reported at 81 Ohio St.3d 214, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-2531. Northfield Homes, Inc. v. Northfield.
Summit App. No. 18296. Reported at 81 Ohio St.3d 259, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
F.E. Sweeney and Pfeifer, JJ., dissent.