

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
January 28, 1998

MERIT DOCKET

97-779. Cincinnati Bell Tel. Co. v. Pub. Util. Comm.

Public Utilities Commission, No. 95-845-TP-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.

97-791. ALLTEL Ohio, Inc. v. Pub. Util. Comm.

Public Utilities Commission, No. 95-845-TP-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.

97-2263. State ex rel. Boswell v. Strausbaugh.

In Mandamus. 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.

97-2363. State ex rel. Pollock v. Kenston Local School Dist.

In Mandamus. On answer of respondent. Answer treated as 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 a limited writ.

97-2485. Greany v. Branyan.

Lucas App. No. L-97-1076. *Sua sponte*, in light of this court's recent decision in *United States Fid. & Guar. Co. v. Lightning Rod. Mut. Ins. Co.* (1997), 80 Ohio St.3d 584, 687 N.E.2d 717, the conflict certified by the court of appeals no longer exists; therefore, this cause is dismissed pursuant to S.Ct.Prac.R. IV(2)(B).

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

Resnick, J., not participating.

97-2540. State ex rel. Lovett v. Kinkela.

In Mandamus. On answer of respondents. Answer treated as a 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 the writ.

97-2541. State ex rel. Smith v. Canode.

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.

97-2555. State ex rel. Harmon v. Fuerst.

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 the writ.

97-2560. State ex rel. Rock v. Griffin.

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.

97-2573. Jackson v. Oddi.

In Mandamus. 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.

97-2574. Straight v. Seventh Dist. Court of Appeals.

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

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

Cook, J., dissents and would grant the writ.

97-2614. State ex rel. Dattilo v. Ohio Dept. of Rehab. & 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.

97-2616. State ex rel. Taylor v. Niehaus.

In Mandamus. *Sua sponte*, cause dismissed.

Douglas, Resnick, F.E. Sweeney, Pfeifer and Lundberg Stratton, JJ., concur.

Moyer, C.J., and Cook, J., dissent and would grant an alternative writ.

97-2619. State ex rel. Hairston v. McMonagle.

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.

97-2688. Crossen v. Carter.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

97-2708. Tinsley v. Walker.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

97-2724. Brown v. Walker.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

98-17. James v. Bridger.

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**

97-2140. State v. Messer.

Clermont App. No. CA96-01-009.

97-2214. State v. Beason.

Lorain App. No. 96CA006641.

Douglas, J., not participating.

97-2216. Cincinnati v. Robinson.
Hamilton App. No. C-970253.

97-2217. Cincinnati v. Robinson.
Hamilton App. No. C-970252.

97-2229. State v. Lovely.
Greene App. No. 96CA142.

97-2239. State v. Sherrills.
Cuyahoga App. No. 56777.

97-2241. State v. Luna.
Montgomery App. No. 16426.

97-2248. State v. Brewer.
Stark App. No. 1997CA00058.
Douglas, J., dissents.

97-2250. State v. Henderson.
Franklin App. No. 97APA04-551.

97-2268. Cline v. Zablotny.
Miami App. No. 96CA48.
Moyer, C.J., dissents.

97-2297. Cleveland Dept. of Pub. Health, Div. of Environment v. Cleveland Bd. of Bldg. Stds. & Bldg. Appeals.
Cuyahoga App. No. 71120.

97-2298. Belock v. Belock.
Geauga App. No. 97-G-2045.

97-2300. State v. Gimenez.
Cuyahoga App. No. 71190.

97-2303. State v. Duhart.

Hamilton App. No. C-960900.

97-2306. State v. Korecky.

Franklin App. No. 97APA02-205.

97-2310. State v. Johnson.

Lorain App. No. 96CA006506.

Douglas, J., not participating.

97-2312. In re Comer.

Franklin App. No. 96APF11-1571.

97-2314. In re Poling.

Fairfield App. Nos. 96CA77 and 96CA78.

Pfeifer, J., dissents.

97-2316. Eubank v. Madison Twp. Trustees.

Franklin App. No. 96APE12-1693.

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

97-2331. State v. Zerla.

Franklin App. No. 96APA11-1583.

Lundberg Stratton, J., not participating.

97-2332. State v. Matthews.

Clark App. No. 96CA0011.

97-2334. State v. Thompson.

Franklin App. No. 96APA12-1679.

97-2340. State v. Ruppart.

Cuyahoga App. No. 73006.

97-2343. In re Guardianship of Raimer.

Geauga App. No. 97-G-2048.

97-2354. State v. Powell.

Ross App. No. 96CA2257.

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

97-2356. State v. Amato.

Lake App. No. 96-L-045.

97-2357. State v. Beverly.

Cuyahoga App. No. 70915.

97-2359. Amy F. v. George J.

Lucas App. No. L-96-370.

97-2360. State v. Schmidt.

Erie App. No. E-96-050.

97-2364. In re Guardianship of Sechler.

Franklin App. Nos. 97APF03-320 and 97APF04-535.

Douglas, J., dissents.

97-2370. State v. Ballard.

Lucas App. No. L-95-394.

97-2372. Mentor v. Caswell.

Lake App. No. 96-L-203.

Moyer, C.J., dissents.

97-2373. State v. Ricker.

Franklin App. No. 97APC01-96.

97-2374. State v. Price.

Franklin App. No. 97APA02-151.

Douglas, J., would allow on Proposition of Law No. III.

97-2382. State v. Land.

Cuyahoga App. Nos. 70875 and 70876.

97-2383. State v. Calloway.
Cuyahoga App. No. 73212.

97-2384. State v. Calloway.
Cuyahoga App. No. 73211.

97-2388. Marley v. Marley.
Butler App. No. CA97-03-072.

97-2389. State v. Barror.
Fulton App. No. F-96-033.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-2391. State v. Cool.
Summit App. No. 18148.

97-2393. State v. Clark.
Franklin App. No. 97APA05-644.

97-2405. State v. Schirtzinger.
Delaware App. No. 97CAA05015.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-2408. State v. Miller.
Butler App. No. CA97-04-075.

97-2410. State v. Davis.
Clark App. No. 96CA116.

97-2412. Dillard v. Canton Drop Forge, Inc.
Stark App. No. 1997CA00114.

97-2420. State v. Lusby.
Hamilton App. No. C-960472.

97-2422. State v. Lang.

Hamilton App. Nos. C-950912 and C-950927.

97-2426. State v. Ellis.

Cuyahoga App. No. 71161.

97-2430. State v. Watson.

Ashland App. No. 97COA01205.

97-2434. State v. Smith.

Butler App. No. CA96-09-186.

97-2439. State v. Scott.

Butler App. Nos. CA96-12-254 and CA97-04-086.

97-2444. State v. Pearson.

Wood App. No. WD-96-067.

Douglas, J., would allow on Proposition of Law No. III only.
Resnick, J., not participating.

97-2449. State v. Cantrell.

Ross App. No. 96CA2255.

97-2456. State v. Allen.

Miami App. No. 95CA70.

97-2458. State v. Martin.

Franklin App. No. 97APA05-708.

97-2463. State v. Thomas.

Cuyahoga App. Nos. 41182 and 41183.

97-2469. State v. Peeples.

Cuyahoga App. No. 72679.

97-2470. State v. Loza.

Butler App. No. CA96-10-214.

Pfeifer, J., dissents.

97-2489. State v. Stearns.

Cuyahoga App. No. 71851.

97-2490. State v. Prater.

Butler App. No. CA97-01-014.

Pfeifer, J., dissents.

97-2496. State v. Smith.

Butler App. No. CA97-01-011.

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

97-2502. State v. Bronaugh.

Hamilton App. No. C-950369.

97-2509. State v. Johnson.

Darke App. No. 96CA1427.

Douglas and Pfeifer, JJ., dissent.

97-2530. State v. Williams.

Hamilton App. No. C-970251.

Pfeifer, J., dissents.

97-2532. Chandler v. Howard.

Pike App. No. 97CA595.

Pfeifer and Lundberg Stratton, JJ., dissent.

MOTION DOCKET

95-1649. Kirschner v. Indus. Comm.

Franklin App. No. 94APD05-762. On request for oral argument. Request denied.

97-187. State ex rel. Strothers v. Wertheim.

Cuyahoga App. No. 71185. On motion for order to show cause. Motion denied.

On motion for Rule 11 sanctions. Motion denied.

Douglas, J., would deny the motions and issue a supplemental order that the pages are to be released at a cost of only \$.05 per page.

97-738. Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.

Public Utilities Commission, No. 95-656-GA-AIR. On motion to consolidate case with case No. 97-2199, *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, Public Utilities Commission No. 95-656-GA-AIR. Motion granted.

97-970. State ex rel. Findlay Publishing Co. v. Hancock Cty. Commrs.

In Mandamus. On bill and documentation in support of request for attorney fees. Attorney fees granted in the amount of \$5,000 plus costs of \$140.

97-2404. State v. Schirtzinger.

Delaware App. No. 97CAA05015. 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.

97-2488. State v. Pearson.

Wood App. No. WD-96-067. 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.

97-2491. Mullins v. Rio Algom, Inc.

Certified State Law Question, No. C:1-97-73. On review of preliminary memoranda. The court will answer the question certified by the United States District Court for the Southern District of Ohio, Western Division:

“Is Section 2745.01 of the Ohio Revised Code unconstitutional under state law thereby rendering Ohio Revised Code Section 2305.112 null and void?”

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

97-2507. Perkins v. Wilkinson Sword, Inc.

Certified State Law Question, No. 96-4144. On review of preliminary memoranda and on motion for admission *pro hac vice* of Carl A. Eck, Louis C. Long and Eric A. Kauffman. The motion for admission *pro hac vice* is granted and the court will answer the question certified by the United States Court of Appeals for the Sixth Circuit:

“May the risk-benefit test of the Ohio Product Liability Act be used in attempting to prove a design defect in a properly functioning disposable cigarette lighter?”

Moyer, C.J., F.E. Sweeney and Lundberg Stratton, JJ., dissent.

97-2654. State v. McElrath.

Summit App. No. 17645. On motion for leave to file delayed appeal. Motion denied.

97-2687. State v. Wallace.

Hamilton App. No. C-970702. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

97-2730. State v. Smith.

Butler App. No. CA97-01-011. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 3 of the court of appeals' Entry Granting Motion to Certify Conflict to the Ohio Supreme Court, dated December 19, 1997:

“The issue for certification is whether, when reviewing a post-conviction relief petition, the trial court must accept affidavits presented in support of the petition as true.”

The conflict case is *State v. Swortcheck* (1995), 101 Ohio App.3d 770, 656 N.E.2d 732.

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

DISCRETIONARY APPEALS ALLOWED

97-2282. Jewett v. Owners Ins. Co.

Licking App. No. 97CA24. Discretionary appeal allowed and cause held for the decision in 97-402 and 97-551, *Ross v. Farmers Ins. Group of Cos.*, Montgomery App. No. 15865; briefing schedule stayed.

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

97-2317. State v. Dickinson.

Union App. No. 14-97-11. 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.

97-2318. State v. Patton.

Union App. No. 14-97-13. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2319. State v. Lacey.

Union App. No. 14-97-15. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2320. State v. Collins.

Union App. No. 14-97-18. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2321. State v. Elkins.

Union App. No. 14-97-21. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2322. State v. Souder.

Union App. No. 14-97-12. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2323. State v. Fielder.

Union App. No. 14-97-10. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2324. State v. Johnson.

Union App. No. 14-97-16. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2325. State v. Vaughan.

Union App. No. 14-97-14. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *supra*; briefing schedule stayed.

97-2328. Ruge v. Conrad.

Clark App. No. 97CA0015. The appeal of Richard Ruge is allowed.

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

The cross-appeal of Ohio Bureau of Workers' Compensation and the Industrial Commission of Ohio is allowed.

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

97-2338. State v. Fuller.

Hamilton App. No. C-960753. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419; briefing schedule stayed.

Resnick, J., dissents.

DISCRETIONARY APPEALS NOT ALLOWED

97-2146. Justice v. Ford Consumer Fin. Co.

Fairfield App. No. 97CA24. (Appeal of Ruth Justice and cross-appeal of Ford Consumer Finance Co., Inc.)

97-2223. State v. Bolognue.

Summit App. No. 18171.

97-2281. Oregon v. Gula.

Lucas App. No. L-96-412.

97-2289. State v. Darden.

Erie App. No. E-90-070.

Resnick, J., not participating.

97-2311. Reiter v. Cincinnati Ins. Co.

Crawford App. No. 3-97-16.

Pfeifer, J., dissents.

Cook, J., not participating.

97-2313. Dayton Power & Light Co. v. Schregardus.

Franklin App. No. 97APH02-293.

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

97-2315. Khoshbin v. Khoshbin.

Summit App. No. 18237.

F.E. Sweeney, J., dissents.

97-2336. Marsh v. State Auto. Mut. Ins. Co.

Montgomery App. No. 16308.

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

97-2337. Manor Care Nursing & Rehab. Ctr. v. Thomas.

Hamilton App. No. C-960802.

97-2346. State v. Roe.

Hamilton App. No. C-960998.

97-2365. State v. Curry.

Scioto App. No. 95CA2339.

97-2368. Gates v. Owens-Corning Fiberglas Corp.

Hamilton App. Nos. C-960369 and C-960416.

97-2369. Helton v. Scioto Cty. Bd. of Commrs.

Scioto App. No. 97CA2486.

97-2371. DeLorean Cadillac, Inc. v. Weaver.

Cuyahoga App. No. 71827.

97-2406. Selvey v. Toledo Edison Co.

Seneca App. No. 13-97-14.

Douglas, J., dissents.

Resnick and Cook, JJ., not participating.

97-2427. Akron v. Rogers Indus. Products, Inc.

Summit App. No. 18227.

Pfeifer and Lundberg Stratton, JJ., dissent.

RECONSIDERATION DOCKET

96-1213. State v. McGuire.

Preble App. No. CA95-01-001. Reported at 80 Ohio St.3d 390, ____ N.E.2d _____. On motion for reconsideration. Motion denied.

97-1887. State v. Tenace.

Lucas App. No. L-95-010. Reported at 80 Ohio St.3d 1465, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

97-1916. Simon v. Ohio Bur. of Emp. Serv.

Hamilton App. No. C-960984. Reported at 80 Ohio St.3d 1465, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

97-1949. State v. Wallen.

Clermont App. No. CA97-02-017. Reported at 80 Ohio St.3d 1466, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

97-1972. State v. Agee.

Montgomery App. No. 16660. Reported at 80 Ohio St.3d 1476, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

97-1973. Rust v. Sidle.

Lucas App. No. L-97-1167. Reported at 80 Ohio St.3d 1480, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

97-2030. State ex rel. Rosile v. Skelley.

In Quo Warranto. Reported at 80 Ohio St.3d 1463, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

97-2031. Dornbirer v. Estate of Dornbirer.

Franklin App. No. 96APE11-1560. Reported at 80 Ohio St.3d 1476, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

97-2072. State v. Buhrman.

Greene App. No. 96CA145. Reported at 80 Ohio St.3d 1477, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

97-2095. State ex rel. Forsyth v. Brigner.

In Mandamus. On motion for reconsideration. Motion denied.

97-2208. Rust v. Sidle.

Lucas App. No. L-97-1167. Reported at 80 Ohio St.3d 1478, ____ N.E.2d _____. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

97-2236. State ex rel. Wray v. Erie Cty. Common Pleas Court.

In Prohibition. Reported at 80 Ohio St.3d 1475, ____ N.E.2d _____. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.