

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
December 23, 1998

MERIT DOCKET

98-2226. State ex rel. Tinsler v. Muehlfeld.

In Prohibition. On answer of respondent State Bank and Trust Company and motion to dismiss of State Bank and Trust Company; on motion to dismiss by John J. Hunter, Jr., answer of respondent by Judge Keith Muehlfeld, motion to dismiss by Judge Keith Muehlfeld, motion to strike motion to dismiss of John J. Hunter, Jr., motion to strike answer of State Bank and Trust Company, and motion to strike motion to dismiss of State Bank and Trust Company; and on motion to strike answer of Judge Keith Muehlfeld and motion to strike motion to dismiss of Judge Keith Muehlfeld.

Sua sponte, cause dismissed.

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

98-2253. Martin v. Ohio Third 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.

98-2261. State ex rel. Cornwell v. Coval.

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.

98-2333. State ex rel. Logue v. Court of Common Pleas of Belmont Cty.

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.

98-2400. Raglin v. Mohr.

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

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

98-2436. Kreuzer v. Edwards.

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

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

98-2471. Powell v. Mack.

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

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

98-2478. State ex rel. Chatmon v. Haskins.

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

98-1464. State v. Kelly.

Medina App. No. 2670-M.

98-1905. State v. Jones.

Ashland App. No. 97COA01240.

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

98-1916. State v. Murphy.

Cuyahoga App. No. 71775.

98-1917. State v. Caldararo.

Franklin App. No. 97APA12-1627.

98-1928. Cincinnati v. Univ. of Cincinnati.

Hamilton App. No. C-980161.

Pfeifer, J., dissents.

98-1932. State v. Harris.

Cuyahoga App. No. 73041.

98-1936. Starr v. Dotsikas.

Cuyahoga App. No. 73201.

Pfeifer, J., dissents.

98-1937. State v. White.

Ashland App. No. 97COA01229.

98-1938. State v. Pace.

Franklin App. No. 97APA10-1425.

98-1942. State v. Sherrills.

Cuyahoga App. No. 56777.

98-1943. State v. Sherrills.

Cuyahoga App. No. 62067.

98-1954. State v. Howard.

Montgomery App. No. 16901.

98-1959. Stan v. Quarto Mining Co.

Monroe App. No. 787.

98-1962. State v. Hutchinson.

Montgomery App. No. 16890.

98-1963. State v. Murphy.

Franklin App. No. 97APA10-1357.

98-1968. Russell v. Dreis & Krump Mfg. Co.

Wayne App. No. 97CA0067.

98-1969. Mallory v. Keating.

Hamilton App. No. C-980160.

Pfeifer, J., dissents.

98-1971. State v. Bumgardner.

Greene App. No. 97CA103.

98-1976. State v. Robinson.

Summit App. No. 19173.

98-1984. Hawkins v. Imboden.

Hamilton App. No. C-970827.

F.E. Sweeney, J., dissents.

98-1985. State v. Hoffman.

Huron App. No. H-97-52.

Moyer, C.J., dissents and would hold this cause for the decision in 97-2730, *State v. Smith*, Butler App. No. CA97-01-011.

98-1988. State v. Dawson.

Franklin App. No. 97APA10-1300. (Appeal of Matthew R. Dawson and cross-appeal of state of Ohio.)

98-2003. State v. Norris.

Stark App. No. 1998CA00204.

98-2011. State v. Waldrop.

Franklin App. No. 98AP-102.

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

98-2013. Fenley v. Bowman.
Clermont App. No. CA98-02-013.

98-2015. State v. Warren.
Hamilton App. No. C-970990.
F.E. Sweeney and Pfeifer, JJ., dissent.

98-2018. Howard v. Seaway Food Town, Inc.
Lucas App. No. L-97-1322.
Resnick, J., not participating.

98-2024. State v. Pratts.
Summit App. No. 18705.
Moyer, C.J., and Pfeifer, J., dissent.

98-2026. Stychno v. Stychno.
Trumbull App. Nos. 96-T-5620 and 97-T-0003. (Appeal of Margaret Stychno and cross-appeal of Nestor Stychno.)
Douglas, J., dissents.
Resnick, J., not participating.

98-2032. Larson v. L & G Real Estate Dev., Inc.
Medina App. No. 2872-M.

98-2033. Feeney v. Eshack.
Summit App. Nos. 18464, 18473 and 18573.
Moyer, C.J., and Pfeifer, J., dissent.

98-2035. State v. Trout.
Knox App. No. 97CA29.
Pfeifer, J., dissents.

98-2036. State v. Robinson.
Montgomery App. No. 16157.
Cook, J., dissents.

98-2037. State v. Whorton.
Hamilton App. No. C-970901.

98-2038. State v. Lippert.

Stark App. No. 1998CA00003.

98-2039. Yontz v. Griffin.

Hardin App. No. 6-98-9.

Lundberg Stratton, J., dissents.

98-2042. Martin v. Bedford Hts.

Cuyahoga App. No. 73725.

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

Pfeifer, J., would allow.

98-2045. Behymer v. Schregardus.

Franklin App. Nos. 98AP-802 and 98AP-803.

98-2048. Szerlip v. Szerlip.

Knox App. No. 97CA31.

98-2051. State v. Wayt.

Butler App. No. CA98-03-063.

98-2052. State v. Smith.

Cuyahoga App. No. 72089.

98-2057. State v. Keith.

Crawford App. No. 3-98-05.

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

Cook, J., would allow on Propositions of Law Nos. I and III and would hold this cause for the decision in 98-1627, *State v. Calhoun*, Lake App. No. 97-L-063.

98-2060. State v. Ward.

Richland App. No. 98CA46.

98-2062. Cotton v. Unknown.

Franklin App. No. 98AP-806.

98-2101. Plott v. Bruzzese.

Licking App. No. 98CA39.

98-2111. State v. Huber.

Hamilton App. No. C-971093.

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

98-2118. State v. Lindsey.

Hamilton App. No. C-971092.

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

98-2123. State v. Kelly.

Hamilton App. No. C-971080.

Douglas and Lundberg Stratton, JJ., dissent.

98-2152. State v. Rocker.

Franklin App. No. 97APA10-1341.

98-2166. State v. Jackson.

Hamilton App. No. C-971015.

Moyer, C.J., and Cook, J., dissent and would allow on Proposition of Law No. II.

98-2177. State v. Ginn.

Hamilton App. No. C-980120.

98-2280. State v. Avery.

Union App. No. 14-97-30.

98-2254. State v. Parnell.

Cuyahoga App. No. 68254.

MOTION DOCKET

98-81. Cappara v. Schibley.

Cuyahoga App. Nos. 71070, 71368 and 71399. On motion to strike portion of reply brief. Motion denied.

98-1074. State v. Jalowiec.

Lorain App. No. 96CA006445. On motion to strike appellant's merit brief. Motion denied; *sua sponte*, appellee granted leave to file within fourteen days.

98-1735. State v. O'Neal.

Hamilton App. No. C-960392. On request for oral argument. Request denied.

98-1879. Agley v. Tracy.

Board of Tax Appeals, No. 96-R-302. On motion for admission *pro hac vice* of George M. Malis and Erich J. D'Andrea. Motion granted.

98-1880. Agley v. Tracy.

Board of Tax Appeals, No. 96-R-301. On motion for admission *pro hac vice* of George M. Malis and Erich J. D'Andrea. Motion granted.

98-1881. Timmis v. Tracy.

Board of Tax Appeals, No. 96-R-303. On motion for admission *pro hac vice* of George M. Malis and Erich J. D'Andrea. Motion granted.

98-2067. State v. Saylor.

Butler App. No. CA98-03-053. On review of order certifying a conflict. The court determines that a conflict exists. *Sua sponte*, cause held for the decision in 97-2730, *State v. Smith*, Butler App. No. CA97-01-011; briefing schedule stayed and cause consolidated with 98-2066, *infra*.

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

98-2285. State ex rel. White v. Goldsberry.

Athens App. No. 98CA38. On motion to consolidate case with 98-2290, *State ex rel. White v. Goldsberry*, Athens App. No. 98CA38. Motion denied.

98-2342. State v. Salinas.

Lake App. No. 96-L-146. On motion for leave to file delayed appeal. Motion denied.

98-2343. State v. Branco.

Stark App. No. CA8618. On motion for leave to file delayed appeal. Motion denied.

98-2357. State v. Ullis.

Lucas App. No. L-95-141. On motion for leave to file delayed appeal. Motion denied.

98-2369. State v. Walker.

Hamilton App. No. C-970647. On motion for leave to file delayed appeal. Motion denied.

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

98-2462. State v. Childs.

Montgomery App. No. CA 16325. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 1 of the court of appeals' Decision and Entry dated October 19, 1998:

"This matter comes before the court upon the application of plaintiff-appellee the State of Ohio for certification that our judgment rendered herein on September 11, 1998, is in conflict with judgments rendered by courts of appeals for Summit County in *State v. Dapice* (1989), 57 Ohio App.3d 99 [566 N.E.2d 1261], and for Stark County in *State v. Blackshear* (May 22, 1989), Stark App. No. CA 7658, unreported [1989 WL 63270]. We have reviewed those judgments, and we are satisfied that our judgment is in conflict with both of them. Accordingly, pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution, we certify that our judgment in this appeal is in conflict with the judgments cited above. The question certified is as follows:

"Does R.C. 2923.01(B) require an indictment or other instrument charging a conspiracy to allege at least one specific, substantial, overt act performed in furtherance of the conspiracy?"

Sua sponte, cause consolidated with 98-2227, *infra*.

F.E. Sweeney, J., dissents to the above.

98-2475. State v. Bugert.

Lucas App. No. L-98-1040. On motion for leave to file delayed appeal. Motion granted.

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

98-2477. State v. Esmond.

Lucas App. No. L-98-1132. On motion for leave to file delayed appeal. Motion granted.

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

DISCRETIONARY APPEALS ALLOWED

98-238. Pesek v. Univ. Neurologists Assn., Inc.

Cuyahoga App. No. 71637.

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

98-1927. Madera v. Satellite Shelters, Inc.

Cuyahoga App. No. 73172.

Cook, J., dissents.

98-1993. State v. Fuson.

Lucas App. No. L-98-1136. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 98-1779, *State v. Conyers*, Lucas App. No. L-97-1327, and 98-1929, *State v. Schultz*; briefing schedule stayed.

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

98-2010. Harp v. Cleveland Hts.

Cuyahoga App. No. 73171.

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

98-2066. State v. Saylor.

Butler App. No. CA98-03-053. Discretionary appeal allowed on Proposition of Law No. II; *sua sponte*, cause held for the decision in 97-2730, *State v. Smith*, Butler App. No. CA97-01-011; briefing schedule stayed and cause consolidated with 98-2067, *supra*.

Resnick, Pfeifer and Lundberg Stratton, JJ., would allow all propositions of law.

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

98-2110. Leisure v. State Farm Auto. Ins. Co.

Stark App. Nos. 1997CA00417 and 1998CA00001. On appeal of Annette E. Leisure et al. Discretionary appeal allowed.

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

On cross-appeal of Farmers Insurance of Columbus, Inc. Discretionary cross-appeal allowed.

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

98-2122. Akron Hydroelectric Co. v. Cuyahoga Falls.

Summit App. No. 18849.

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

98-2227. State v. Childs.

Montgomery App. No. 16325. Discretionary appeal allowed; *sua sponte*, cause consolidated with 98-2462, *supra*.

F.E. Sweeney, J., dissents.

DISCRETIONARY APPEALS NOT ALLOWED

98-1892. Hoffman v. Hoffman.

Summit App. No. 18809.

98-1903. State v. Johnson.

Montgomery App. No. 16803.

98-1920. Weinberg v. Doe.

Cuyahoga App. No. 73671.

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

98-1931. Houston v. Fisciak.

Cuyahoga App. No. 73668.

98-1947. Kap v. B.F. Goodrich Co.

Summit App. No. 18903.

98-1950. Burke v. First Citizens Bldg. & Loan Assn.

Knox App. No. 97CA28.

98-1982. Rasalan v. TJX Operating Cos., Inc.

Summit App. No. 18619. (Appeal of Aurora U. Rasalan and cross-appeal of TJX Operating Companies et al.)

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

98-1986. Brooks v. Orshoski.

Ottawa App. No. OT-98-002.

Resnick, J., not participating.

98-1998. Townsend v. State Farm Mut. Auto. Ins. Co.

Sandusky App. No. S-97-059.

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

98-2001. In re Dissolution of Marriage of Briggs.

Summit App. No. 18686.

98-2014. Tyler v. Cleveland.

Cuyahoga App. No. 73136.

98-2028. Third Fed. S. & L. Assn. v. Hayward.

Summit App. No. 18561.

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

98-2030. Peters v. Mabini.

Cuyahoga App. No. 73373.

Resnick and Lundberg Stratton, JJ., dissent.

98-2031. State v. Enovitch.

Cuyahoga App. No. 72827.

Lundberg Stratton, J., dissents.

98-2092. In re Rocky Fork Lake Sanitary Dist.

Highland App. No. 98CA1.

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

98-2153. McConnell v. Budget Inns of Am.

Cuyahoga App. No. 72755.

98-2157. Erie Ins. Co. v. Favor.

Franklin App. No. 97APE12-1693.

Douglas, Resnick and Pfeifer, JJ., dissent.

RECONSIDERATION DOCKET

96-1388. State ex rel. Crawford v. Indus. Comm.

Franklin App. No. 95APD10-1340. Reported at 83 Ohio St.3d 526, ____ N.E.2d _____. On motion for reconsideration. Motion denied.

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

98-96. State ex rel. RMI Titanium Co. v. Indus. Comm.

Franklin App. No. 96APD08-1043. Reported at 83 Ohio St.3d 546, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

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

98-1146. State v. Wogenstahl.

Hamilton App. No. C-930222. Reported at 83 Ohio St.3d 516, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-1523. Hall v. Forsyth.

Montgomery App. No. 17014. Reported at 84 Ohio St.3d 1407, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-1524. State v. Hughes.

Stark App. No. 1997CA00356. Reported at 84 Ohio St.3d 1411, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

98-1603. Zengler v. Smith.

Stark App. No. 97CA0399. Reported at 83 Ohio St.3d 1471, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

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

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

Lake App. No. 97-L-090. Reported at 83 Ohio St.3d 1475, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

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

98-1672. Bowersock v. Bowersock.

Allen App. No. 1-98-10. Reported at 84 Ohio St.3d 1408, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-1683. State v. Sells.

Logan App. No. 8-97-36. Reported at 84 Ohio St.3d 1408, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

98-1694. Pace v. Granecki.

Wood App. No. WD-97-053. Reported at 84 Ohio St.3d 1412, ____ N.E.2d ____.

On motion for reconsideration. Motion denied.

Douglas, J., dissents.

Resnick, J., not participating.