

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
November 18, 1998

MERIT DOCKET

98-1759. Miller v. State.

In Mandamus. On answer of respondent by Reginald A. Wilkinson, motion to dismiss by Honorable Ruth Ann Franks, and motion for order allowing relator access to law library. *Sua sponte*, cause dismissed.

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

98-1888. State ex rel. Meek v. Ghee.

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.

98-1945. State ex rel. Hambrick v. Ohio Adult Parole Auth.

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.

98-1994. State ex rel. Ferguson v. Rogers.

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.

98-2002. State ex rel. Gonzalez v. McGough.

In Mandamus. On answer of respondent and on motion to dismiss. *Sua sponte*, cause dismissed.

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

98-2007. Mortemore v. State.

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

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

Resnick, J., not participating.

98-2075. State ex rel. Urban v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2116. State ex rel. Lanham v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2137. State v. Johnson.

Hamilton App. No. C-970695. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

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

98-2139. State v. Leslie.

Hamilton App. No. C-970686. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). See *State v. Cook* (1998), 83 Ohio St.3d 404, 700 N.E.2d 570. This cause is therefore dismissed.

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

98-2140. State v. McDonough.

Hamilton App. No. C-970689. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). See *State v. Cook* (1998), 83 Ohio St.3d 404, 700 N.E.2d 570. This cause is therefore dismissed.

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

98-2143. State v. Ward.

Hamilton App. No. C-970683. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). See *State v. Cook* (1998), 83 Ohio St.3d 404, 700 N.E.2d 570. This cause is therefore dismissed.

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

98-2170. State ex rel. Hall v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2188. State ex rel. Parks v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2193. State ex rel. DeJute v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2205. State ex rel. Thomas v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2206. State ex rel. Felver v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2217. State ex rel. Ambrosia v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2234. Wright v. Summit Cty. Jail.

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

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

98-2236. State ex rel. Knott v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2250. State ex rel. Zeigler v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2312. State ex rel. Haynes v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2319. State ex rel. Chappell v. Ohio Adult Parole Auth.

In Prohibition. *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**

98-855. State v. Alexander.

Cuyahoga App. No. 72028.

98-1412. State v. Bateman.

Franklin App. No. 97APA09-1149.

98-1421. Sherrills v. Pennington.

Franklin App. No. 97APE11-1518.

98-1424. Breckville v. Linn.

Cuyahoga App. No. 72808.

98-1436. Northfield Ctr. Dev. Corp. v. Macedonia Planning Comm.

Summit App. No. 18547.

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

98-1455. State v. Patton.

Stark App. No. 1997CA00149.

98-1463. In re Nichols.

Clermont App. No. CA97-11-102.

Cook, J., dissents in part and would allow on Proposition of Law No. I and hold this cause for the decision in 97-2566, *Braatz v. Braatz*, Mahoning App. No. 95 C.A. 260.

98-1471. State v. Taylor.

Lucas App. No. L-98-1183.

98-1473. State v. Redman.

Clark App. No. 97CA81.

98-1479. State v. Perkins.

Madison App. No. CA97-10-047.

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

98-1491. State v. Blackmon.

Franklin App. No. 97APA10-1386.

98-1499. State v. Lelux.

Franklin App. No. 97APA10-1308.

98-1500. Musson v. Musson.

Hardin App. No. 6-98-01.

98-1506. State v. Billups.

Franklin App. Nos. 97APA08-1041 and 97APA08-1042.

Moyer, C.J., dissents and would allow this cause and hold it for the decision in 98-162, *Desenco, Inc. v. Akron*, Summit App. No. 18321.

98-1512. State v. Nichols.

Franklin App. No. 98AP-674.

98-1517. State v. Cochran.

Clark App. No. 97CA50.

98-1523. Hall v. Forsyth.

Montgomery App. No. 17014.

98-1526. State v. Scanlon.

Licking App. No. 95-134.

98-1528. Wigley v. Fredmont Builders, Inc.

Stark App. No. 1997CA00440.

98-1531. State v. Gress.

Montgomery App. No. 16899.

Moyer, C.J., dissents.

98-1552. McDonald v. Ault.

Ross App. No. 97CA2291.

Lundberg Stratton, J., dissents.

98-1554. State v. Conschafsky.

Scioto App. No. 98CA2577.

98-1560. State ex rel. Beach v. Mohr.

Ross App. No. 98CA2419.

98-1574. Pryor v. Pryor.

Miami App. No. 97CA58.

98-1618. State v. Gonzalez.

Clark App. No. 96CA124.

98-1625. Snider v. Forsyth.

Clark App. Nos. 97CA123 and 97CA124.

98-1631. State v. Kapusi.

Ashtabula App. Nos. 97-A-0027 and 97-A-0028.

98-1639. Siegel v. Tidd.

Montgomery App. No. 16829.

98-1646. Johnson v. Sun TV & Appliances.

Cuyahoga App. No. 72530.

98-1653. State v. Reed.

Clark App. No. 98CA52.

98-1658. In re Shaffer.

Guernsey App. No. 97CA26.

Moyer, C.J., dissents.

Cook, J., dissents and would hold this cause for the decision in 97-2398, *Cuyahoga Child Support Enforcement Agency v. Guthrie*, Cuyahoga App. No. 72216.

98-1672. Bowersock v. Bowersock.

Allen App. No. 1-98-10.

98-1675. Ramco Specialists, Inc. v. Pansegrau.

Summit App. No. 18697.

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

98-1678. State v. Chivers.

Montgomery App. No. 16751.

98-1683. State v. Sells.

Logan App. No. 8-97-36.

Pfeifer, J., dissents.

98-1687. State v. Cannon.

Hamilton App. No. C-980389.

98-1690. Arbino v. Xavier Univ.

Hamilton App. No. C-970793.

98-1692. State v. Brown.

Licking App. No. 98CA52.

Lundberg Stratton, J., dissents.

98-1693. State v. Kimmie.

Cuyahoga App. No. 72904.

98-1696. State v. Martz.

Guernsey App. No. 97CA9.

98-1703. State v. Jackson.

Richland App. No. 97CA95.

Pfeifer, J., dissents.

98-1704. In re Sunnycalb.

Butler App. No. CA97-07-143.

98-1718. Chillicothe v. Lowery.

Ross App. No. 97CA2331.

Moyer, C.J., dissents.

98-1721. Nozik v. Mentor Lagoons, Inc.

Lake App. No. 97-L-004.

Pfeifer, J., dissents.

98-1740. State v. Jones.

Hamilton App. No. C-970598.

98-1754. State v. Price.

Montgomery App. No. 16591.

Moyer, C.J., dissents.

98-1776. State v. Munici.

Cuyahoga App. No. 73666.

98-1784. State v. Henes.

Lucas App. No. L-98-1085.

Resnick, J., not participating.

98-1827. State v. Johnson.

Hamilton App. No. C-970695.

Moyer, C.J., and Cook, J., would allow on Propositions of Law Nos. III, IV, and V.

98-1923. State v. Trivett.

Hamilton App. No. C-970299.

98-1964. State v. Simms.

Cuyahoga App. No. 69314.

98-1965. State v. Riccota.

Lorain App. No. 97CA006690.

98-1977. State v. Sprenz.

Summit App. No. 18254.

98-2009. State v. Esway.

Stark App. Nos. 9118 and 9190.

98-2017. State v. Thompson.
Stark App. No. 9063.

MOTION DOCKET

97-1618. Ameritech Ohio v. Pub. Util. Comm.

Public Utilities Commission, No. 97-654-TP-CSS. On motion for leave to intervene of Ohio Cable Telecommunications Association and motion for leave to intervene of Ohio Consumers' Counsel. Motions granted.

Resnick, J., not participating.

97-2200. Hillyer v. Great Am. Ins. Co.

Lake App. No. 97-L-148. On motion to strike Section II of reply brief and on motion to strike Section II of *amicus curiae* reply brief. Motions denied.

98-405. Hamilton Ins. Serv., Inc. v. Nationwide Ins. Cos.

Richland App. Nos. 97CA27 and 97CA42. On motion to strike reply brief of Ohio Chamber of Commerce et al. Motion denied.

98-1166. State v. Robb.

Franklin App. Nos. 95APA08-1003 and 95APA08-1008. On motion for appointment of counsel. Motion referred to the court of appeals for appointment of counsel.

98-1265. State v. Irby.

Hamilton App. No. C-960908. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

98-1966. Klever v. Canton Sachsenheim, Inc.

Stark App. No. 1998CA0010. 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' Judgment Entry filed September 14, 1998:

"Upon proper motion by Canton Sachsenheim, Inc. and for the cases cited within its Motion to Certify Conflict, particularly the decision by the Eighth Appellate District in *Lee v. Peabody's Inc.* (June 9, 1994), Cuyahoga County Court of Appeals No. 65090, unreported, 1994 WL 258640, this court hereby finds that a conflict does exist between the appellate districts of Ohio and the following question is certified to the Ohio Supreme Court for its review:

“Does an adult, who is between 18 and 21 years of age, state a claim for relief against a liquor permit holder under Ohio Revised Code §4399.18 and §4301.22 when the adult has become voluntarily intoxicated and incurred self-inflicted injuries or death?”

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

98-2065. State v. Whatley.

Summit App. No. 19194. On motion for leave to file delayed appeal. Motion denied.

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

98-2071. State v. Miller.

Franklin App. No. 97APA07-879. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

98-2072. State v. Laird.

Stark App. No. 1997CA00211. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

98-2077. State v. Wooden.

Summit App. No. 15548. On motion for leave to file delayed appeal. Motion denied.

98-2091. Nuss v. Hand-Craft Cleaners.

Summit App. No. 18850. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause held for the decision in *Denham v. New Carlisle*, Clark App. No. 98CA19; briefing schedule stayed.

Douglas, J., determines that a conflict exists but would not hold this cause for *Denham v. New Carlisle*.

98-2099. State v. Styles.

Cuyahoga App. No. 71052. On motion for leave to file delayed appeal. Motion denied.

98-2144. State v. Weitbrecht.

Holmes App. No. 97CA588. 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' Judgment Entry filed September 15, 1998:

"This matter is before this court upon appellant's motion to certify a conflict. Certification is urged for the reason the judgment entered in this case on July 31, 1998 is in conflict with judgments entered by the Eleventh District Court of Appeals in *State v. Stanford* ([Sept. 23], 1996), Trumbull App. No. 95-T-5358, unreported [1996 WL 537856], and by the Twelfth District Court of Appeals in *State v. Garland* (December 16, 1996), Fayette App. No. CA96-05-011, unreported [1996 WL 723715].

"* * *

"Upon review, we find certification to the Supreme Court of Ohio is warranted. We hereby certify the following question:

"Does Ohio's involuntary manslaughter statute [R.C. 2903.04(B)] as applied to a minor misdemeanor traffic offense which results in a vehicular homicide violate the Eighth Amendment to the United States Constitution and Section 9, Article [I] of the Ohio Constitution."

Pfeifer, J., dissents.

DISCRETIONARY APPEALS ALLOWED

98-1624. Witherspoon v. Allstate Ins. Co.

Richland App. No. 97CA114.

Moyer, C.J., would allow on Propositions of Law Nos. I and II only.

Cook and Lundberg Stratton, JJ., dissent.

98-1717. Holliman v. Allstate Ins. Co.

Franklin App. No. 97APE10-1327.

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

98-1906. Klever v. Canton Sachsenheim, Inc.

Stark App. No. 1998CA0010. Discretionary appeal allowed; *sua sponte*, cause consolidated with 98-1966, *supra*.

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

DISCRETIONARY APPEALS NOT ALLOWED

98-1420. In re Salyers.

Ross App. Nos. 97CA2312 and 97CA2319.

98-1433. Ohio Dept. of Mental Retardation & Dev. Disabilities v. Moore.

Gallia App. No. 98CA1.

Lundberg Stratton, J., dissents.

98-1435. Crow v. The Andersons.

Lucas App. No. L-97-1347.

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

98-1498. Seitz v. Stevenson.

Pickaway App. No. 97CA42.

Douglas, Pfeifer and Cook, JJ., dissent.

98-1524. State v. Hughes.

Stark App. No. 1997CA00356.

Pfeifer, J., dissents.

98-1561. Nye v. Dimon.

Franklin App. No. 97APF09-1220.

Moyer, C.J., dissents.

98-1565. State v. Clapper.

Carroll App. No. 673.

98-1568. State v. Blair.

Clark App. No. 97CA67.

Lundberg Stratton, J., dissents.

98-1576. State v. Dugan.

Erie App. No. E-97-118.

98-1655. Ohio Plaza Assoc., Inc. v. Hillsboro Assoc.

Highland App. No. 96CA898. (Appeal of Robert Satterfield and cross-appeal of Ohio Plaza Associates, Inc.)

98-1661. Zurowski v. Giannini.

Cuyahoga App. No. 72704.

98-1662. State ex rel. Hill v. Indus. Comm.

Franklin App. No. 97APD06-799.

98-1663. Powers v. Springfield City Schools.

Clark App. No. 98CA10.

98-1669. Muncy v. Am. Select Ins. Co.

Franklin App. No. 97APE09-1226.

98-1691. State v. Green.

Delaware App. No. 97CAA11052.

Douglas and Pfeifer, JJ., dissent.

98-1694. Pace v. Granecki.

Wood App. No. WD-97-053.

Resnick, J., not participating.

98-1702. Brewer Co. v. Barrett Paving Materials, Inc.

Hamilton App. Nos. C-960728 and C-970099.

98-1706. Zeek v. Taylor-Dunn.

Butler App. No. CA97-07-133.

Douglas and Resnick, JJ., dissent.

98-1712. Blanks v. Greater Cleveland Regional Transit Auth.

Cuyahoga App. No. 72991.

Resnick, J., dissents.

98-1734. Mast v. Progressive Cas. Ins. Co.

Holmes App. No. CA004.

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

98-1738. Hollenbeck v. Colgate-Palmolive Co.

Guernsey App. No. 97CA16. On discretionary appeal and motion for admission *pro hac vice* of Robert D. Goldstein. Discretionary appeal and motion denied.

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

98-1777. Gibson v. Westfield Natl. Ins. Co.

Monroe App. No. 788.

Lundberg Stratton, J., dissents.

RECONSIDERATION DOCKET

96-1999. State ex rel. Salyer v. Ohio Bur. of Workers' Comp.

Franklin App. No. 95APD10-1341. Reported at 83 Ohio St.3d 387, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

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

97-2641. Cincinnati Bar Assn. v. Fidler.

Reported at 83 Ohio St.3d 396, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-473. BSW Dev. Group v. Dayton.

Montgomery App. No. 15186. Reported at 83 Ohio St.3d 338, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

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

98-1220. State v. Hanes.

Sandusky App. No. S-98-018. Reported at 83 Ohio St.3d 1446, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

98-1361. Guess v. Ohio Dept. of Rehab. & Corr.

Franklin App. No. 98AP-476. Reported at 83 Ohio St.3d 1452, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-1389. Guess v. Attorney General's Office.

Franklin App. No. 97API11-1450. Reported at 83 Ohio St.3d 1452, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-1391. State v. Guess.

Franklin App. No. 98AP-308. Reported at 83 Ohio St.3d 1452, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-1440. Comer v. Calim.

Hamilton App. Nos. C-970603 and C-970635. Reported at 83 Ohio St.3d 1452, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, Resnick and Pfeifer, JJ., dissent.

98-1582. State ex rel. Estate of Goddard v. Dix.

In Mandamus and Prohibition. Reported at 83 Ohio St.3d 1444, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, Resnick and Pfeifer, JJ., dissent.

98-1587. State v. Williams.

Butler App. No. CA97-08-162. Reported at 83 Ohio St.3d 1449, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

98-1617. State v. Miller.

Logan App. No. 8-98-5. Reported at 83 Ohio St.3d 1449, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-1980. State v. Arnold.

Greene App. No. 91CA43. Reported at 83 Ohio St.3d 1458, ___ N.E.2d ___. On motion for reconsideration. Motion denied.