

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

June 16, 1999

MERIT DOCKET

99-797. State ex rel. Ritter v. Ghee.

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.

99-890. Turner v. Wilkinson.

In Habeas Corpus. On petition for writ of habeas corpus by Kenneth A. Turner. *Sua sponte*, cause dismissed.

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

99-928. Augustine v. State.

In Habeas Corpus. On petition for writ of habeas corpus by William A. Augustine. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur. Lundberg Stratton, J., concurs because of a lack of service.

99-968. Owens v. Brigano.

In Habeas Corpus. On petition for writ of habeas corpus by Frank Floyd Owens. *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**

99-514. State v. Staten.

Franklin App. No. 98AP-263. Discretionary appeal and cross-appeal denied.

99-521. State v. Phillips.

Summit App. No. 18949.

99-525. State v. Muncey.

Madison App. No. CA98-03-013.

99-528. State v. Montgomery.

Lucas App. No. L-98-1026.

99-534. Parker Financial, Inc. v. Matthews.

Adams App. No. 97CA652.

Douglas and Pfeifer, JJ., dissent.

99-535. State v. Manning.

Lorain App. No. 97CA006921.

99-547. State v. Swearingen.

Marion App. No. 9-97-58.

Douglas, J., dissents.

99-554. Bowen v. Bowen.

Medina App. Nos. 2720-M and 2733-M.

99-563. State v. Mirmohamed.

Franklin App. No. 97APA11-1492.

99-565. In re Kelly.

Franklin App. No. 98AP-588.

Douglas, J., dissents.

99-566. Rivera v. Lake Terminal RR. Co.

Lorain App. No. 97CA006722.

Douglas, J., dissents.

99-567. State v. Lewis.

Lorain App. No. 98CA007007.

99-571. Chicago W. Pullman Corp. v. Quinn.

Lorain App. No. 98CA007048.

99-576. State v. Noland.

Hamilton App. No. C-980390.

99-580. Picciones Jewelers & Gift Shop v. Simms.

Portage App. No. 98-P-0125.

99-582. Vale Edge, Inc. v. Simms.

Portage App. No. 98-P-0124.

99-586. State v. Walker.

Franklin App. No. 98AP-571.

99-587. Ricketts v. Ricketts.

Clark App. No. 97CA82.

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

99-590. State v. Johnson.

Seneca App. No. 13-98-39.

99-601. State v. Festi.

Tuscarawas App. No. 1999AP020008.

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

99-607. In re Nicholson.

Cuyahoga App. No. 74657.

Moyer, C.J., dissents.

99-626. State v. Padgett.

Montgomery App. No. 17033.

99-627. Wellston v. Pendleton.

Jackson App. No. 98CA826.

99-636. State v. Legge.

Hamilton App. No. C-980239.

99-668. Bea v. Cincinnati.

Hamilton App. No. C-980222.

99-688. State v. Galloway.

Lucas App. No. L-94-209.

Lundberg Stratton, J., dissents.

Resnick, J., not participating.

99-718. State v. Stone.

Hamilton App. No. C-980382.

Moyer, C.J., dissents and would hold this cause for the decision in 98-2603, *State v. Edmonson*, Portage App. No. 97-P-0067.

Lundberg Stratton, J., dissents.

99-720. Wiczynski v. Wiczynski.

Lucas App. No. L-98-1123.

Resnick, J., not participating.

99-721. State v. Stringer.

Scioto App. No. 97CA2506.

99-725. State v. Irely.

Summit App. No. 18391.

99-728. State v. Hill.

Hamilton App. No. C-980565.

99-777. State v. Sleppy.
Darke App. No. 96CA1412.
Moyer, C.J., dissents.

MOTION DOCKET

97-1655. State ex rel. Kmart Corp. v. Frantom.
Franklin App. No. 96APD09-1257. On request for oral argument. Request denied.

98-913. State v. Green.
Lucas C.P. No. 971450. On motion to supplement record. Motion granted.

98-1428. State ex rel. Youngstown City School Dist. Bd. of Edn. v. Youngstown.

In Mandamus. Upon consideration of relator's motion for an order for respondents to show cause why they should not be held in contempt for failure to comply with our December 2, 1998 order,

IT IS ORDERED that respondents show cause why they should not be held in contempt of our December 2, 1998 order. Any evidence the parties intend to present on the contempt issue is due within thirty days; respondents' brief is due within twenty days after the submission of evidence; relator's brief is due within twenty days after the filing of respondents' brief; and respondents' reply brief is due within five days after the filing of relator's brief. See *State ex rel. Howard v. Ferreri* (1995), 72 Ohio St.3d 1543, 650 N.E.2d 903.

98-1446. Victoria Plaza L.P. v. Cuyahoga Cty. Bd. of Revision.
Board of Tax Appeals, No. 96-B-641. On motion to withdraw as counsel by Thomas A. Kondzer and Kimberley A. Aldrich. Motion granted.
Lundberg Stratton, J., dissents.

98-2439. Ricker v. John Deere Ins. Co.
Franklin App. No. 97APE11-1505. On motion for admission *pro hac vice* of Edward B. Foley by Matthew D. Miko. Motion granted.

99-93. State v. Hanna.
Warren C.P. No. 98CR17677. On motion to supplement record. Motion granted.

99-769. State v. Jones.

Montgomery App. No. 17382. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals' Judgment Entry filed March 23, 1999:

“Does an arrest in violation of R.C. 2935.26 constitute an unreasonable seizure under the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution, thereby requiring suppression of evidence seized as a consequence of the violation of that statute?”

Resnick, J., not participating.

Sua sponte, this cause is consolidated with 99-613, *infra*.

Resnick, J., not participating.

The conflict cases are *State v. Holmes* (1985), 28 Ohio App.3d 12, 28 OBR 21, 501 N.E.2d 629; *State v. Heideman* (June 23, 1988), Ross App. No. 1429, unreported, 1988 WL 69122; and *State v. Wilkinson* (Sept. 30, 1986), Huron App. No. H-85-27, unreported, 1986 WL 11411.

99-827. State v. Grigsby.

Stark App. No. 1998CA00319. On motion for signature appeal bond. Motion denied.

99-914. State v. Childress.

Cuyahoga App. No. 71956. On motion for leave to file delayed appeal. Motion denied.

99-915. State v. Franco.

Madison App. No. CA97-08-035. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

99-921. State v. Marshall.

Richland App. No. 96CA108. On motion for leave to file delayed appeal. Motion denied.

99-927. State v. Carper.

Fayette App. No. CA98-06-009. On review of order certifying a conflict. The court determines that a conflict exists on the following question stated in the court of appeals' entry filed April 16, 1999:

“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?”

Sua sponte, cause held for the decision in 98-2144, *State v. Weitbrecht*, Holmes App. No. 97CA588; briefing schedule stayed.

99-932. State v. Pate.

Hancock App. No. 5-96-14. On motion for leave to file delayed appeal. Motion denied.

99-933. State v. Palmer.

Franklin App. No. 99AP-21. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

99-950. State v. Thompson.

Lorain App. No. 98CA007001. On motion for leave to file delayed appeal. Motion denied.

99-951. State v. Spears.

Richland App. No. 95CA18. On motion for leave to file delayed appeal. Motion denied.

99-954. State v. Hill.

Stark App. No. 1998CA0083. On motion for leave to file delayed appeal. Motion denied.

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

99-982. State ex rel. Sovchik v. Cloverleaf Local School Bd. of Edn.

Medina App. No. 2959-M. On motion to expedite appeal. Motion denied.

Lundberg Stratton, J., denies the motion as moot.

99-1016. State v. Lantz.

Perry App. No. 99CA14. On motion for stay pending determination of the appeal. Motion granted.

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

99-1017. Youngstown v. Behen.

Mahoning App. No. 98CA186. On motion for stay of execution of judgment. Motion denied.

DISCRETIONARY APPEALS ALLOWED

99-219. Karr v. Borchardt.

Seneca App. No. 13-98-33. Discretionary appeal allowed; *sua sponte*, cause consolidated with 99-222, 99-223, and 99-224, *infra*.

Lundberg Stratton, J., would allow on Propositions of Law Nos. I, II, and III and hold this cause for the decision in 99-342, 99-348 and 99-618, *Holcomb v. State Farm Ins. Cos.*, Franklin App. No. 98AP-353.

Cook, J., would hold this cause for the decision in 99-342, 99-348 and 99-618, *Holcomb v. State Farm Ins. Cos.*, Franklin App. No. 98AP-353.

99-222. Karr v. Borchardt.

Seneca App. No. 13-98-36. Discretionary appeal allowed; *sua sponte*, cause consolidated with 99-219, *supra*, and 99-223 and 99-224, *infra*.

Cook, J., would hold this cause for the decision in 99-342, 99-348 and 99-618, *Holcomb v. State Farm Ins. Cos.*, Franklin App. No. 98AP-353.

Lundberg Stratton, J., dissents.

99-223. Karr v. Borchardt.

Seneca App. No. 13-98-35. Discretionary appeal allowed; *sua sponte*, cause consolidated with 99-219 and 99-222, *supra*, and 99-224, *infra*.

Lundberg Stratton, J., would allow on Propositions of Law Nos. I, II, and III and hold this cause for the decision in 99-342, 99-348 and 99-618, *Holcomb v. State Farm Ins. Cos.*, Franklin App. No. 98AP-353.

Cook, J., would hold this cause for the decision in 99-342, 99-348 and 99-618, *Holcomb v. State Farm Ins. Cos.*, Franklin App. No. 98AP-353.

99-224. Karr v. Borchardt.

Seneca App. No. 13-98-34. Discretionary appeal allowed; *sua sponte*, cause consolidated with 99-219, 99-222, and 99-223, *supra*.

Cook, J., would hold this cause for the decision in 99-342, 99-348 and 99-618, *Holcomb v. State Farm Ins. Cos.*, Franklin App. No. 98AP-353.

Lundberg Stratton, J., would allow on Propositions of Law Nos. I, II, and III and hold this cause for the decision in 99-342, 99-348 and 99-618, *Holcomb v. State Farm Ins. Cos.*, Franklin App. No. 98AP-353.

99-286. State v. Williams.

Lake App. No. 97-L-191. On discretionary appeal and on motion for admission *pro hac vice*. Appeal allowed and motion granted.

99-378. Coletta v. Yang.

Montgomery App. No. 17289.

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

99-455. State v. Krouse.

Lucas App. No. L-98-1082. *Sua sponte*, cause held for the decision in 98-1779, *State v. Conyers*, Lucas App. No. L-97-1327; briefing schedule stayed.

99-461. Smock v. Hall.

Geauga App. No. 97-G-2090.

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

99-496. Donnelly v. Herron.

Cuyahoga App. No. 74324.

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

99-504. Koch v. Rist.

Erie App. No. E-97-049.

Cook, J., dissents.

Resnick, J., not participating.

99-613. State v. Jones.

Montgomery App. No. 17382. *Sua sponte*, cause consolidated with 99-769, *supra*.

Resnick, J., not participating.

DISCRETIONARY APPEALS NOT ALLOWED

99-552. Este Oils Co. v. Federated Ins. Co.

Hamilton App. C-980048. On discretionary appeal and on motion for admission *pro hac vice* of Charles E. Spevacek by Elizabeth A. McCord and James J. Montgomery. Appeal and motion denied.

Pfeifer, J., dissents.

99-557. State v. McKinney.
Clinton App. No. CA98-02-008.

99-559. Hess v. Hess.
Stark App. No. 1998CA00132.
Resnick, J., dissents.

99-564. Dalton v. Belden & Blake Corp.
Wayne App. No. 97CA0073.
Moyer, C.J., and Lundberg Stratton, J., dissent.

99-573. Caldwell v. Fazio.
Cuyahoga App. No. 75173.
Resnick, J., dissents.

99-574. State v. Davis.
Montgomery App. No. 16255.

99-581. State v. Roughton.
Wood App. No. WD-97-038.

99-588. Minnick v. Lee.
Lucas App. No. L-98-1221.
Resnick, J., not participating.

99-595. Buoscio v. Kinkopf.
Cuyahoga App. No. 76095.

99-605. State v. Reynolds.
Clermont App. No. CA98-01-006.
Moyer, C.J., dissents.

99-608. McKibben v. Samuels.
Hamilton App. No. C-980156.

99-614. Lindsey v. Auto Temp, Inc.
Clermont App. No. CA98-09-082.

99-615. State ex rel. Stickles v. Maumee.

Lucas App. No. L-98-1143.

Resnick, J., dissents.

99-616. Iwenofu v. St. Luke School.

Cuyahoga App. No. 73355.

F.E. Sweeney, J., not participating.

99-619. Fowler v. Hills & Dales Owners Assn.

Stark App. No. 1998CA00220.

99-631. Dardinger v. Anthem Blue Cross & Blue Shield.

Licking App. No. 99CA23.

Moyer, C.J., dissents.

99-665. Becker v. Becker.

Butler App. Nos. CA98-02-031 and CA98-02-036.

RECONSIDERATION DOCKET

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

Lake App. No. 96-L-148. Reported at 85 Ohio St.3d 410, ___ N.E.2d ___. On motion for reconsideration/clarification. Motion denied.

Cook and Lundberg Stratton, JJ., dissent.

98-255. Dupee v. Tracy.

Board of Tax Appeals, No. 96-K-300. Reported at 85 Ohio St.3d 350, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-1157. State v. Gillard.

Stark App. No. CA6701. Reported at 85 Ohio St.3d 363, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-1755. State ex rel. Schmieder v. Indus. Comm.

Franklin App. No. 97APD05-662. Reported at 85 Ohio St.3d 389, ___ N.E.2d ___. On motion for reconsideration by Daimler Chrysler Corporation. Motion denied.

Resnick and Cook, JJ., dissent.

99-123. In re Estate of Silka.

Lucas App. No. L-98-1057. Reported at 85 Ohio St.3d 1463, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas and Resnick, JJ., not participating.

99-191. State v. Johnson.

Hamilton App. No. C-980266. Reported at 85 Ohio St.3d 1464, ___ N.E.2d ___. On motion for reconsideration and motion to strike. Motions denied.

99-215. In re Adoption of Jane Doe.

Summit App. No. 19017. Reported at 85 Ohio St.3d 1467, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

99-250. Huntington Natl. Bank v. Metzenbaum.

Cuyahoga App. No. 73723. Reported at 85 Ohio St.3d 1468, ___ N.E.2d ___. On motion for reconsideration. Motion denied.