

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
November 24, 1999

MERIT DOCKET

99-1737. State ex rel. Budreaux v. Randel.

In Mandamus. On answer of respondents. 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.

99-1763. State ex rel. Delventhal v. Zaleski.

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.

99-1791. State ex rel. Budreaux v. Ryzner.

In Mandamus. On answer of respondents. 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.

99-1800. State ex rel. Martin v. Ohio Dept. of Rehab. & Corr.

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.

99-1842. Budd v. Wilkinson.

In Habeas Corpus. On petition for writ of habeas corpus by Robert P. Budd. *Sua sponte*, cause dismissed.

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

99-1867. Dolan v. Kronenberg.

Cuyahoga App. No. 76054. 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., Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Douglas and Lundberg Stratton, JJ., dissent.

**DISMISSALS, SUA SPONTE, NO SUBSTANTIAL
CONSTITUTIONAL QUESTION AND DISCRETIONARY
APPEALS, IF APPLICABLE, NOT ALLOWED**

99-902. State v. Goodballet.

Columbiana App. No. 98CO15.

Moyer, C.J., and Cook, J., would allow on Propositions of Law Nos. I and IV and hold the cause for the decision in 99-765, *State v. Suffecool*, Stark App. No. 1998CA00101.

99-999. State v. Ochs.

Knox App. No. 98CA0003.

99-1532. Marcum v. Rice.

Franklin App. Nos. 98AP-717, 98AP-718, 98AP-719 and 98AP-721.

Pfeifer and Lundberg Stratton, JJ., dissent.

99-1568. State v. Dawson.

Summit App. No. 19179.

Moyer, C.J., would allow on Proposition of Law No. I.

Cook, J., would allow on Propositions of Law Nos. I and III.

99-1601. State v. Bradford.

Lorain App. No. 98CA007264.

99-1611. State v. Barnhart.

Washington App. No. 98CA50.

99-1621. State v. Reed.

Lucas App. No. L-98-1367.

Resnick, J., not participating.

99-1624. State v. Israfil.

Montgomery App. No. 17472.

99-1629. Belt v. Geneva.

Tuscarawas App. No. 1999AP030018.

99-1632. Heard v. United Parcel Serv.

Franklin App. No. 98AP-1267.

F.E. Sweeney, J., dissents.

99-1635. HKS Realty Co. v. Williams.

Cuyahoga App. No. 74390.

99-1644. State v. Purvey.

Lorain App. No. 97CA006935.

99-1646. Cleveland v. Rhoades.

Cuyahoga App. No. 74572.

99-1649. State v. Stefanski.

Marion App. No. 9-98-63.

99-1653. State v. Brumett.

Hamilton App. No. C-980917.

Moyer, C.J., would allow on Propositions of Law Nos. IV and V and hold the cause for the decision in 99-765, *State v. Suffecool*, Stark App. No. 1998CA00101.

Lundberg Stratton, J., would allow on Proposition of Law No. I.

99-1657. Davis v. Dalton.

Lorain App. No. 98CA007099.

99-1661. Gourmet Beverage Ctr., Inc. v. Ohio Liquor Control Comm.

Licking App. No. 98CA128.

99-1665. State v. Stefanski.

Marion App. No. 9-98-63.

99-1670. Sadey v. Metromedia Steakhouses Co., L.P.

Cuyahoga App. No. 74178.

99-1672. State v. Mootispaw.

Fayette App. No. CA99-01-001.

99-1676. State v. McLemore.

Lorain App. No. 99CA007377.

99-1680. State v. Patterson.

Cuyahoga App. No. 74348.

99-1687. State v. Davenport.

Hamilton App. No. C-980516.

Moyer, C.J., would allow on Proposition of Law No. I.

99-1690. State v. Larkins.

Cuyahoga App. Nos. 74302 and 74303.

99-1693. State v. McElfresh.

Licking App. No. 99CA00001.

99-1694. State v. Oviedo.

Wood App. No. WD-98-061.

99-1696. Mun. Micro Computer Sys., Inc. v. Madonia.

Cuyahoga App. No. 76380.

99-1701. State v. Smith.

Mahoning App. No. 97CA5.

Resnick and Lundberg Stratton, JJ., dissent.

99-1706. Lee v. Mendel.

Franklin App. No. 98AP-1404.

99-1707. State v. Weaver.

Franklin App. No. 98AP-1345.

99-1719. Nwabara v. Willacy.

Cuyahoga App. No. 74139. On discretionary appeal and on motion for sanctions for frivolous action. Appeal and motion denied.

99-1729. State v. Holly.

Cuyahoga App. No. 74452.

99-1730. State v. Pena.

Cuyahoga App. No. 76717.

MOTION DOCKET

99-1553. State ex rel. Untied v. Taft.

In Mandamus. On request for findings of fact and conclusions of law. Request denied.

Lundberg Stratton, J., would dismiss.

99-1590. State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas.

Cuyahoga App. No. 76161. On motion for leave to supplement record. Motion denied.

99-1824. State v. Henry.

Montgomery App. No. 17261. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

99-1830. State v. Code.

Cuyahoga App. No. 74590. On motion for leave to file delayed appeal. Motion denied.

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

99-1841. State v. Martin.

Hamilton App. No. C-960563. On motion for leave to file delayed appeal. Motion denied.

99-1877. State v. Fluker.

Lorain App. No. 97CA006930. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

99-1880. State v. Southall.

Stark App. No. 1999CA0140. On motion for leave to file delayed appeal. Motion denied.

99-1883. State v. Dawson.

Summit App. No. 19179. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issues stated in the court of appeals' Journal Entry filed September 22, 1999, at page 3:

"Because we find our decision in this case in conflict with the decision of the Second Appellate District in *Wright* [below], we certify the following question for review:

"Do Crim.R. 33, 47 and 57(B), and applicable local rules, permit a trial court to deny a motion for leave to move for a new trial without a hearing, when that motion is premised upon:

"(1) the discovery of new evidence and is made later than one hundred twenty days after the verdict is rendered, or

"(2) being unavoidably prevented from filing the motion and is made later than fourteen days after the verdict is rendered,

"and affidavits attached to the motion for leave to move for a new trial support the assertion that the movant was unavoidably prevented from timely discovering the evidence or timely filing a motion for a new trial."

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

The conflict case is *State v. Wright* (1990), 67 Ohio App.3d 827, 588 N.E.2d 930.

99-1900. State v. Rosario.

Lorain App. No. 92CA005425. On motion for leave to file delayed appeal. Motion denied.

99-1922. State v. Clark.

Auglaize App. No. 2-99-16. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

99-1924. State v. Lankford.

Belmont App. No. 96BA51. On motion for leave to file delayed appeal. Motion denied.

DISCRETIONARY APPEALS ALLOWED

99-1520. Henley v. Youngstown Bd. of Zoning Appeals.

Mahoning App. No. 97CA249.

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

99-1570. Simmerer v. Dabbas.

Summit App. No. 18718.

Moyer, C.J., dissents.

99-1581. State v. Posey.

Summit App. No. 19266.

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

99-1586. In re Wieland.

Montgomery App. No. 17646.

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

99-1602. Rogers v. State Farm Mut. Auto. Ins. Co.

Butler App. No. CA98-10-215. Discretionary appeal allowed and cause held for the decision in 98-2630, *Wolfe v. Wolfe*, Montgomery App. No. 17111; briefing schedule stayed.

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

DISCRETIONARY APPEALS NOT ALLOWED

99-1507. Henley Health Care, Div. of Maxxim Med., Inc. v. Ohio Bur. of Workers' Comp.

Franklin App. No. 98AP-922.

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

99-1577. Hamlin v. Hamlin.

Darke App. No. 99CA1484.

99-1587. Whitehall v. Dong.

Franklin App. No. 98AP-1155.

99-1598. Highland Cty. Bd. of Commrs. v. Fasbender.

Highland App. No. 98CA24.

Moyer, C.J., dissents.

99-1609. McDonald v. Miller.

Franklin App. No. 98AP-1388.

99-1637. Bratton v. E. Ohio Gas Co.

Summit App. No. 19616.

99-1648. Bond v. Velotta Co.

Hamilton App. No. C-980663.

Moyer, C.J., would allow and hold this cause for the decision in 99-1920, *State ex rel. Bond v. Velotta Co.*, Franklin App. No. 98AP-1225.

99-1650. In re Appeal of Borean.

Delaware App. No. 99CAH01003.

99-1655. DuBoe v. Accurate Fabrication, Inc.

Franklin App. No. 98AP-842.

Douglas and Resnick, JJ., dissent.

99-1656. Harbi Abuzahrieh & Co. v. Ohio Liquor Control Comm.

Cuyahoga App. No. 74556.

Pfeifer, J., dissents.

99-1667. Starks v. Ohio Bur. of Motor Vehicles.

Franklin App. No. 98AP-1177.

99-1702. Marino v. Marino.

Tuscarawas App. No. 1998AP110121.

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

99-1708. State v. Schmidt.

Hamilton App. No. C-980982.

Moyer, C.J., and Cook, J., dissent, would reverse, and would remand the cause for application of *State v. Edmonson* (1999), 86 Ohio St.3d 324, 715 N.E.2d 131.

99-1721. Sweitzer v. Outlet Communications, Inc.

Franklin App. No. 98AP-745.

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

99-1726. State v. Fleming.

Lorain App. No. 98CA007003.

99-1741. Albert v. Trumbull Cty. Bd. of Mental Retardation/Developmental Disabilities.

Trumbull App. No. 98-T-0095.

Douglas, J., dissents.

99-1802. Agostinelli v. DeBartolo Realty Corp.

Mahoning App. No. 97CA227.

Douglas and Pfeifer, JJ., dissent.

RECONSIDERATION DOCKET

98-520. State v. Bays.

Greene App. No. 95CA118. Reported at 87 Ohio St.3d 15, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2276. State v. Bruni.

Stark App. No. 98CA00105. Reported at 86 Ohio St.3d 1220, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, J., dissents, would grant the motion and reverse, and would remand the cause to the court of appeals to apply *State v. Calhoun* (1999), 86 Ohio St.3d 279, 714 N.E.2d 905.

99-507. In re Application of Kapel.

Reported at 87 Ohio St.3d 122, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

99-1278. State v. Ridenbaugh.

Licking App. Nos. 97CA149, 97CA150, 97CA153 and 97CA154. Reported at 87 Ohio St.3d 1405, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Moyer, C.J., would grant.

Cook, J., would allow on Propositions of Law Nos. II and V and would hold the cause on Propositions of Law Nos. III and V for the decision in 99-765, *State v. Suffecool*, Stark App. No. 1998CA00101.

Lundberg Stratton, J., would allow on Propositions of Law Nos. IV and V.

99-1285. State v. Hoffer.

Montgomery App. No. 17241. Reported at 87 Ohio St.3d 1405, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

99-1382. State v. Macht.

Hamilton App. No. C-980676. Reported at 87 Ohio St.3d 1418, ___ N.E.2d ___. On motion for reconsideration. Motion denied.