

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
December 22, 1999

MERIT DOCKET

99-1863. State ex rel. Walls v. Second 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, Cook and Lundberg
Stratton, JJ., concur.

99-1884. State ex rel. McDaniels v. Summit Cty. Ninth Dist. Court of Appeals.

In Mandamus and Procedendo. On complaint in mandamus and procedendo by
Kenneth McDaniels. *Sua sponte*, cause dismissed.

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

99-1927. State ex rel. Craig v. Sargus.

In Procedendo. 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 and Cook, JJ., concur.
Lundberg Stratton, J., dissents and would grant the writ.

99-1955. State ex rel. Cripps v. Court of Appeals, Twelfth Dist.

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.

99-2038. State ex rel. Karns v. Ohio Adult Parole Auth.

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

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

99-2080. State ex rel. Cobler v. Ohio Adult Parole Auth.

In Habeas Corpus. On petition for writ of habeas corpus by Richard L. Cobler. *Sua sponte*, cause dismissed.

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

99-2090. In re Dugan.

In Habeas Corpus. On petition for writ of habeas corpus by Mark Spurlock. *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**

99-1671. State v. Buckner.

Hamilton App. No. C-980889.

99-1778. State v. Tomaino.

Butler App. No. CA98-10-212. On discretionary appeal and cross-appeal. Appeals denied.

Moyer, C.J., dissents.

99-1801. Kotoch v. Highland Hts.

Cuyahoga App. No. 74426.

Pfeifer, J., dissents.

99-1805. State v. Shepherd.

Cuyahoga App. No. 72794.

Resnick, J., dissents.

99-1809. State v. Camp.

Cuyahoga App. No. 74562.

99-1812. Cicchini v. Crew.

Cuyahoga App. No. 75591.

Douglas, J., dissents.

99-1814. State v. Gee.

Putnam App. No. 12-99-08.

99-1820. State v. Baker.

Clermont App. No. CA98-11-108.

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

99-1825. State v. Erwin.

Licking App. No. 99CA54.

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

Cook, J., concurs with the Chief Justice except that she would not allow Proposition of Law No. II.

99-1827. State v. Brockman.

Cuyahoga App. No. 74485.

99-1832. Dixon v. Nowakowski.

Lucas App. No. L-98-1372.

Resnick, J., not participating.

99-1833. Cervone v. Boris.

Mahoning App. No. 96CA191.

99-1837. State v. Garrie.

Washington App. No. 99CA34.

99-1843. State v. Wolfe.

Hamilton App. No. C-990531.

99-1844. State v. McCrady.

Washington App. No. 97CA33.

99-1845. State v. Babcock.

Geauga App. No. 98-G-2144.

99-1847. Weaver v. Spencer Twp. Park Dist.

Allen App. No. 1-99-45.

Douglas and Cook, JJ., dissent.

99-1850. Carver v. Deerfield Twp. Bd. of Zoning Appeals.

Portage App. No. 98-P-0062.

99-1852. State v. Hatcher.

Hamilton App. No. C-980938.

99-1853. State v. Gibbs.

Clermont App. No. CA98-11-106.

Pfeifer, J., dissents.

99-1858. State v. Heddleson.

Stark App. No. 99CA00074.

99-1868. Levine v. Levine.

Washington App. No. 98CA34.

Douglas and Resnick, JJ., dissent.

99-1870. State v. Redmond.

Cuyahoga App. No. 74738.

99-1886. State v. Clay.

Summit App. No. 16583.

99-1909. Grubic v. Grubic.

Cuyahoga App. No. 73793.

MOTION DOCKET

99-905. State v. Smith.

Richland C.P. No. 98CR601D. This cause is pending before the court as an appeal as of right from the Court of Common Pleas of Richland County. Upon consideration of appellant's motion to remand to the trial court for correction of the record,

IT IS ORDERED that the cause be remanded to the trial court for a period of thirty days for an election of which aggravated murder count the appellant is sentenced on and to correct the record accordingly;

IT IS FURTHER ORDERED that the briefing schedule be held in abeyance for the thirty-day period; and

IT IS FURTHER ORDERED that the appellant's request to remand this case for any further proceedings on the sexual motivation specification be denied.

99-1142. OHIC Ins. Co. v. Ohio Ins. Guar. Assn.

In Mandamus. On motion to amend complaint in mandamus to substitute Linda Neff for relators Marilyn and Gary Crater and on request for oral argument. Motion and request granted.

99-1337. Galmish v. Cicchini.

Stark App. Nos. 97CA00326 and 97CA00403. On amended motion to remand to the Stark County Court of Appeals, Fifth District. Motion denied.

99-1659. State ex rel. Messina v. Steiner.

In Mandamus. On motion to dismiss. *Sua sponte*, alternative writ granted.

99-1960. State v. Moore.

Fairfield App. No. 99CA24. 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 October 25, 1999, at page 2:

"Is the odor of burnt marijuana, alone, sufficient to provide probable cause to search a defendant's motor vehicle?"

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

Sua sponte, cause consolidated with 99-1855, *State v. Moore*, Fairfield App. No. 99CA24.

The conflict cases are *State v. Younts* (1993), 92 Ohio App.3d 708, 637 N.E.2d 64; and *State v. Haynes* (July 19, 1996), Portage App. No. 95-P-0007, unreported, 1996 WL 649167.

99-1962. Johnson v. Rhodes.

Washington App. No. 98CA26. 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' Decision and Entry filed October 5, 1999, at page 3:

"Pursuant to S.Ct.Prac.R. IV(2)(A), this court determines that a conflict exists between the districts on these issues: (1) whether Ohio Revised Code Section 2305.15 as construed in *Wetzel v. Weyant* (1975), 41 Ohio St.2d 135 [70 O.O.2d 227, 323 N.E.2d 711], is unconstitutional for the reason that it constitutes a burden on interstate commerce under the holding in *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.* (1988), 486 U.S. 888, 108 S.Ct. 2218 [100 L.Ed.2d 896]; and (2) whether the statute of limitations under Ohio Revised Code Section 2305.15 is tolled when a person is temporarily out of the State of Ohio for other than business reasons."

Resnick and Pfeifer, JJ., dissent.

Sua sponte, cause consolidated with 99-1652, *Johnson v. Rhodes*, Washington App. No. 98CA26.

The conflict cases are *Brown v. Lavery* (1993), 87 Ohio App.3d 745, 622 N.E.2d 1179; *Gehr v. Elden* (July 8, 1992), Lorain App. No. 91CA005192, unreported, 1992 WL 161393; and *Hoagland v. Webb* (June 3, 1994), Montgomery App. Nos. 14024 and 14061, unreported, 1994 WL 237504.

99-2018. State v. James.

Franklin App. No. 98AP-673. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

Lundberg Stratton, J., not participating.

99-2056. Hadick v. Jones.

Summit App. No. 19427. On motion for stay of court of appeals' judgment. Motion denied.

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

99-2075. State v. Kirkwood.

Lucas App. No. L-98-1381. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.

99-2079. State v. Wright.

Hamilton App. No. C-980046. On motion for leave to file delayed appeal. Motion denied.

DISCRETIONARY APPEALS ALLOWED

99-1521. State ex rel. Dispatch Printing Co. v. Columbus.

Franklin App. No. 99AP-766.

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

99-1652. Johnson v. Rhodes.

Washington App. No. 98CA26. Discretionary appeal allowed and cause consolidated with 99-1962, *Johnson v. Rhodes*, Washington App. No. 98CA26.

Douglas, J., would allow only on Propositions of Law Nos. II and III.

Pfeifer, J., dissents.

99-1755. Greene Cty. Agricultural Soc. v. Liming.

Greene App. No. 98CA119.

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

99-1769. Painesville Bldg. Dept. v. Dworken & Bernstein Co., L.P.A.

Lake App. No. 98-L-223.

Pfeifer and Cook, JJ., dissent.

99-1771. Hamilton Cty. Community Mental Health Bd. v. Steele.

Hamilton App. No. C-980965.

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

99-1855. State v. Moore.

Fairfield App. No. 99CA24. Discretionary appeal allowed and cause consolidated with 99-1960, *State v. Moore*, Fairfield App. No. 99CA24.

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

DISCRETIONARY APPEALS NOT ALLOWED

99-1796. State v. Glaude.

Cuyahoga App. No. 73757.

Resnick and Pfeifer, JJ., dissent.

99-1806. Birch v. Al Castrucci, Inc.

Montgomery App. No. 17512.

Douglas, J., dissents.

99-1807. Roth v. Yonts.

Licking App. No. 99CA21.

99-1828. Black v. Barberton Citizens Hosp.

Summit App. No. 19670.

Moyer, C.J., dissents.

99-1831. Rakowski v. Fais.

Franklin App. Nos. 99AP-917, 99AP-918 and 99AP-919.

99-1835. Licking v. Portage Whitehouse, Inc.

Summit App. No. 19695.

Moyer, C.J., dissents.

99-1839. Angel v. Rudd.

Warren App. Nos. CA98-08-103 and CA98-08-112.

99-1859. Krupar v. Centria Partnership.

Guernsey App. No. 98CA18. On discretionary appeal and on motion for admission *pro hac vice* of Paul Amato and Rich Antonelli by David W. Burns. Appeal and motion denied.

Douglas and Pfeifer, JJ., dissent.

99-1862. Giannini v. Fairview Park.

Cuyahoga App. No. 74190.

99-1871. Luketic v. Univ. Circle, Inc.

Cuyahoga App. No. 74688.

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

99-1875. In re Guardianship of Riegel.

Jackson App. No. 98CA832.

Douglas and Resnick, JJ., dissent.

99-1942. Perry v. Goodin.

Mahoning App. No. 99CA187.

RECONSIDERATION DOCKET

99-852. Anderson v. Linkscorp, Inc.

Franklin App. No. 98AP-454. Reported at 87 Ohio St.3d 1443, ____ N.E.2d ____.
On motion for reconsideration. Motion denied.

Douglas, J., dissents.

99-1528. Van Kan v. Mattheus.

Geauga App. No. 98-G-2139. Reported at 87 Ohio St.3d 1440, ____ N.E.2d ____.
On motion for reconsideration. Motion denied.

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

99-1536. Earley v. Keenan.

Cuyahoga App. No. 76653. Reported at 87 Ohio St.3d 1443, ____ N.E.2d _____. On
motion for reconsideration. Motion denied.