

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

May 3, 2000

MERIT DOCKET

00-314. Myers v. Pub. Util. Comm.

Utilities Commission, No. 98-1143-TP-CSS. *Sua sponte*, appellant's appeal is dismissed.

Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Moyer, C.J., and Douglas, J., concur and would also deny the motion for leave to intervene.

Lundberg Stratton, J., dissents and would dismiss the motion for leave to intervene.

00-367. State ex rel. Davie v. Unruh.

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

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

Douglas, J., concurs and would also deny the motion for summary judgment.

00-407. State ex rel. Thompson v. Mengel.

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.

00-559. Flores v. Anderson.

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

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

00-561. Roland v. Gabbard.

In Habeas Corpus. On petition for writ of habeas corpus by Robin Neil Roland. *Sua sponte*, cause dismissed.

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

00-565. In re Application of Burgess.

In Habeas Corpus. On petition for writ of habeas corpus by John R. Burgess. *Sua sponte*, cause dismissed.

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

00-682. Richards v. Maloney.

In Prohibition. On complaint in prohibition by Charles L. Richards. On S.Ct.Prac.R. X(5) determination, 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**

99-2220. State v. Linton.

Licking App. No. 99CA10.

99-2318. State v. Scuba.

Geauga App. No. 98-G-2176.

00-229. State v. Mackey.

Cuyahoga App. No. 75300.

Douglas and Pfeifer, JJ., dissent.

Resnick, J., not participating.

00-232. State v. Gerber.

Wayne App. No. 99CA0018.

00-235. State v. Stefanski.

Marion App. No. 9-99-51.

00-238. Knepler v. Cowden.

Montgomery App. No. 17473.

Douglas, J., not participating.

00-241. State v. Baksi.

Trumbull App. No. 98-T-0123.

00-243. State v. Norman.

Franklin App. No. 99AP-398.

00-253. Kerr-Morris v. Equitable Real Estate Invest. Mgt., Inc.

Hamilton App. No. C-990333.

00-255. State v. Rendina.

Lake App. No. 98-L-129.

F.E. Sweeney, J., dissents.

00-256. Dean v. Akron Gen. Med. Ctr.

Summit App. No. 18636.

00-257. State v. Spingola.

Athens App. No. 99CA19.

Pfeifer, J., dissents.

00-258. Culbertson v. Salser.

Summit App. No. 19487.

00-261. State v. Headley.

Summit App. No. 19481.

Pfeifer, J., dissents.

00-264. State v. Sullivan.

Cuyahoga App. Nos. 74735 and 74736.

00-271. State v. Robinson.

Summit App. No. 19719.

00-273. State v. Ballard.

Warren App. No. CA99-06-067.

Moyer, C.J., dissents and would hold this cause for the decision in *State v. Williams* (2000), 88 Ohio St.3d 513, 728 N.E.2d 342.

00-275. Wise v. Qualified Emergency Specialists, Inc.

Hamilton App. No. C-980802.

F.E. Sweeney, J., dissents.

00-276. State v. Nicholas.

Portage App. No. 98-P-0061.

00-279. State v. Johnson.

Richland App. No. 99CA90.

00-284. State v. Nichols.

Vinton App. No. 99CA532.

00-286. State v. Weidinger.

Huron App. No. H-99-004.

Resnick, J., not participating.

00-291. State v. Bucci.

Ashtabula App. No. 98-A-0050.

00-298. State v. Kachermeyer.

Franklin App. No. 99AP-439.

Moyer, C.J., dissents.

00-303. Manogg v. Stickle.

Licking App. No. 99CA82.

Resnick, J., not participating.

00-309. T.L. Knox Investments v. Justice.

Knox App. No. 99CA8.

00-310. Cirotto v. Ohio Unemp. Comp. Bd.

Franklin App. No. 99AP-61.

00-312. State v. Reidy.

Erie App. No. E-98-009.

Resnick, J., not participating.

00-315. Jennings v. Univ. Ear, Nose & Throat Specialists, Inc.

Hamilton App. No. C-980994.

Resnick, J., would allow and vacate the judgment of the court of appeals for want of a final appealable order.

F.E. Sweeney, J., would allow.

00-318. State v. Napier.

Hamilton App. No. C-980999.

00-320. State v. Rector.

Montgomery App. No. 17792.

00-324. State v. Shackelford.

Hamilton App. No. C-980980.

00-325. State v. Cavins.

Montgomery App. No. 17962.

00-326. Pisani v. Pisani.

Cuyahoga App. No. 76980.

Resnick, J., not participating.

00-328. Brown v. Stickle.

Licking App. No. 99CA86.

00-331. State v. English.

Lorain App. No. 99CA007305.

00-334. State v. Jones.

Cuyahoga App. No. 75574.

Resnick, J., not participating.

00-335. Trubiani v. Graziani.

Medina App. No. 2874-M.

00-338. State v. Barnes.

Cuyahoga App. No. 76686.

Pfeifer, J., dissents.

00-340. State v. Dickerson.

Lucas App. No. L-98-1100.

Resnick, J., not participating.

00-342. State v. Overholt.

Medina App. No. 2929-M.

00-344. State v. Smith.

Cuyahoga App. No. 72089.

Pfeifer, J., dissents.

00-346. State v. Parra.

Lucas App. No. L-99-1123.

Resnick, J., not participating.

00-351. Frazier v. State Bd. of Edn.

Cuyahoga App. No. 75042.

00-352. G. Herschman Architects v. Ringco, Inc.

Cuyahoga App. Nos. 75174, 75175 and 75321.

00-354. In re Cundiff.

Franklin App. No. 99AP-364.

00-382. State v. Joshua.
Ross App. No. 98CA2466.

00-389. State v. Mincy.
Hamilton App. No. C-990251.

00-392. David v. Edwood Dev. Co.
Summit App. No. 19252.

00-395. State v. Coates.
Hamilton App. No. C-990279.

00-402. Traver v. Young.
Lucas App. No. L-98-1390.
F.E. Sweeney, J., dissents.
Resnick, J., not participating.

00-426. State v. Stark.
Montgomery App. No. 17644.

00-432. Georgeadis v. Dials.
Franklin App. No. 99AP-535.

MOTION DOCKET

99-1521. State ex rel. Dispatch Printing Co. v. Columbus.
Franklin App. No. 99AP-766. On motion for admission *pro hac vice* of Lucy A. Dalglish, Esq., by Richard M. Goehler, Esq. Motion granted.

99-2074. State v. Fawcett.
Wood App. No. WD99-062. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 4 of the court of appeals' Decision and Judgment Entry filed October 18, 1999:

“Is the jurisdiction of an Ohio appellate district contingent upon the county where the trial court is located or upon the county where the incident which is the subject of the case occurred?”

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

The conflict case is *State v. Fawcett* (Sept. 24, 1999) Seneca App. No. 13-99-14, unreported, 1999 WL 797042.

99-2151. Alder v. Eli Lilly & Co.

Summit App. No. 19400. On motion for admission *pro hac vice* of James J. Dillon, Esq., by Robin G. Weaver, Esq. Motion granted.

99-2236. Kenney v. Henry Fisher Builder, Inc.

Hamilton App. No. C-990591. On motion for sanctions for frivolous action by Henry Fischer Builder, Inc. and Victory Mortgage, Ltd. Motion granted.

00-41. State v. Miller.

Butler App. No. CA98-06-129. On motion for hearing en banc. Motion denied.

00-252. E. Liverpool v. Columbiana Cty. Budget Comm.

Board of Tax Appeals, Nos. 97-D-1516 and 97-D-1517. On motion to dismiss by city of East Liverpool. Motion denied.

Lundberg Stratton, J., dissents.

00-355. State v. Coffman.

Delaware App. No. 99CAA09044. 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' Judgment Entry filed February 14, 2000, at page 2:

“(1) Is the denial of a motion for shock probation a final appealable order?”

“(2) Is the denial of a motion for shock probation a final appealable order only when accompanied by constitutional or statutory violations?”

Moyer, C.J., dissents.

Sua sponte, cause consolidated with 00-330, *State v. Coffman*, Delaware App. No. 99CAA09044.

The conflict cases are *State v. Bauer* (Apr. 15, 1987), Hamilton App. No. C-860357, unreported; *State v. Brandon* (1993), 86 Ohio App.3d 671, 621 N.E.2d 776; *State v. Riggs* (Oct. 4, 1993), Meigs App. Nos. 503 and 506, unreported, 1993 WL 405491; and *State v. Delaney* (1983), 9 Ohio App.3d 47, 9 OBR 50, 458 N.E.2d 462.

00-364. State ex rel. Felson v. McHenry.

In Mandamus. On S.Ct.Prac.R. X(5) determination,

IT IS ORDERED that relators' motion to amend their complaint be, and hereby is, GRANTED, that respondents' motion to dismiss be DENIED, and that an alternative writ be GRANTED.

IT IS FURTHER ORDERED that this case be immediately referred for a settlement conference under S.Ct.Prac.R. XIV(6). The settlement conference will conclude within sixty days of this entry. Until that time, the parties' submission of evidence and briefs is stayed. S.Ct.Prac.R. XIV(6)(C).

F.E. Sweeney and Cook, JJ., dissent and would dismiss the cause.

00-374. Clark v. Scarpelli.

Montgomery App. No. 17883. 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 February 8, 2000, at page 2 and 3:

“Does the [policy language quoted below] unambiguously limit [uninsured-motorist/underinsured-motorist] coverage to a single per-person limit for all wrongful death claims derived from one deceased insured?”

“The limits of liability shown in the Declarations apply subject to the following:

“1. The limit for ‘each person’ is the maximum for bodily injury sustained by any person in any one accident. Any claim for loss of consortium or injury to the relationship arising from this injury shall be included in this limit.

“2. Subject to the limit for ‘each person,’ the limit for ‘each accident’ is the maximum for bodily injury sustained by two or more persons in any one accident.

“3. Subject to the law of the state of the occurrence, we will pay no more than these maximums regardless of the number of vehicles insured, insured persons, claims, claimants, policies, or vehicles involved in the accident.”

Pfeifer, J., dissents.

Sua sponte, cause consolidated with 00-206, *Clark v. Scarpelli*, Montgomery App. No. 17883.

The conflict case is *Farmers Ins. of Columbus, Inc. v. Atkinson* (Oct. 29, 1992), Stark App. No. CA-8931, unreported, 1992 WL 318886.

00-428. Holeton v. Crouse Cartage Co.

Certified State Law Question, No. 98CV7578. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following questions posed by the United States District Court for the Northern District of Ohio, Western Division:

“1. Does R.C. § 4123.931 violate Article II, Section 35 of the Ohio Constitution?”

“2. Does R.C. § 4123.931 violate Article I, Section 19 of the Ohio Constitution?”

“3. Does R.C. § 4123.931 violate Article I, Section 16 of the Ohio Constitution?”

“4. Does R.C. § 4123.931 violate Article II, Section 28 of the Ohio Constitution?”

“5. Does R.C. § 4123.931 violate Article I, Section 2 of the Ohio Constitution?”

“6. Does R.C. § 4123.931 violate Article II, Section 15 of the Ohio Constitution?”

“7. Is R.C. § 4123.931 contrary to Ohio Civil Rule 49(C) and, therefore, invalid and unenforceable?”

“8. Does R.C. § 4123.931 constitute an invalid waiver of an injured employee’s right to receive and retain workers’ compensation benefits in violation of R.C. § 4123.80?”

00-448. Lonas v. Kail.

Harrison App. No. 491. On motion for stay of court of appeals’ decision regarding prejudgment attachment, bond, and costs. Motion denied.

00-513. Stevens v. Ackman.

Butler App. No. CA99-03-053. 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 March 10, 2000, at page 2:

“[W]hether an ‘edge drop’ on the berm of a county or city road, in and of itself, constitutes a nuisance within the meaning of R.C. 2744.02(B)(3).”

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

Sua sponte, cause consolidated with 00-225, *Stevens v. Ackman*, Butler App. No. CA99-03-053.

The conflict case is *Thompson v. Muskingum Cty. Bd. of Commrs.* (Nov. 12, 1998), Muskingum App. No. CT98-0010, unreported, 1998 WL 817826.

00-520. State v. Vender.

Medina App. No. 2614-M. On motion for leave to file delayed appeal. Motion granted.

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

00-550. George Shima Buick, Inc. v. Ferencak.

Lake App. No. 98-L-202. 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 March 1, 2000, at page 2:

“Whether R.C. 1925.17 unconstitutionally usurps the Supreme Court’s authority to prescribe rules governing the practice and procedure in Ohio courts by permitting a layperson to represent his corporation.”

Pfeifer, J., dissents.

Sua sponte, cause consolidated with 00-203, *George Shima Buick, Inc. v. Ferencak*, Lake App. No. 98-L-202.

The conflict cases are *Alliance Group, Inc. v. Rosenfield* (1996), 115 Ohio App.3d 380, 685 N.E.2d 570, and *A.B.C. Check Cashing, Inc. v. Leader Builders, Inc.* (Apr. 22, 1999), Cuyahoga App. No. 73969, unreported, 1999 WL 236695.

00-575. State v. Burns.

Hamilton App. No. C-990253. On motion for leave to file delayed appeal. Motion granted.

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

00-590. State v. Dvorkin.

Cuyahoga App. Nos. 75340 and 75341. On motion for continuation of bail and continuation of suspension of execution of sentence. Motion denied.

Resnick, J., dissents.

00-615. Courtyard on Coventry v. Giambrone Masonry, Inc.

Cuyahoga App. No. 75271. On motion for stay of execution of judgment pending appeal. Motion denied.

DISCRETIONARY APPEALS ALLOWED

00-16. Kroh v. Continental Gen. Tire, Inc.

Summit App. No. 19412.

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

00-104. Boone v. Vanliner Ins. Co.

Franklin App. No. 98AP-1535.

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

00-108. Bennett v. Stanley.

Washington App. No. 98CA36.

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

00-151. State v. Lozano.

Lorain App. No. 98CA007143.

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

00-196. Midwest Fireworks Mfg., Inc. v. Deerfield Twp. Bd. of Zoning Appeals.

Portage App. No. 98-P-0131.

Pfeifer and Cook, JJ., dissent.

00-200. State v. Sess.

Hamilton App. No. C-990246.

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

00-203. George Shima Buick, Inc. v. Ferencak.

Lake App. No. 98-L-202. *Sua sponte*, cause consolidated with 00-550, *George Shima Buick, Inc. v. Ferencak*, Lake App. No. 98-L-202.

Cook, J., would allow on Proposition of Law No. I only.

Douglas and Pfeifer, JJ., dissent.

00-206. Clark v. Scarpelli.

Montgomery App. No. 17883. *Sua sponte*, cause consolidated with 00-374, *Clark v. Scarpelli*, Montgomery App. No. 17883.

Pfeifer and Lundberg Stratton, JJ., dissent.

00-225. Stevens v. Ackman.

Butler App. No. CA99-03-053. *Sua sponte*, cause consolidated with 00-513, *Stevens v. Ackman*, Butler App. No. CA99-03-053.

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

00-330. State v. Coffman.

Delaware App. No. 99CAA09044. *Sua sponte*, cause consolidated with 00-355, *State v. Coffman*, Delaware App. No. 99CAA09044.

DISCRETIONARY APPEALS NOT ALLOWED

00-218. Barker v. Ohio Turnpike Comm.

Portage App. No. 98-P-0110.

Douglas, J., dissents.

00-219. Parks v. Menyhart Plumbing & Heating Supply Co., Inc.

Cuyahoga App. No. 75424.

00-222. Russell v. Corbin.

Cuyahoga App. No. 75236. On discretionary appeal. Appeal denied.

Douglas, J., dissents.

On discretionary cross-appeal. Appeal denied.

00-223. Bausch v. George.

Wayne App. No. 99CA0010.

00-228. Redding v. Redding.

Clinton App. No. CA99-06-015.

00-230. Money Station, Inc. v. Electronic Payment Serv., Inc.

Hamilton App. No. C-990064.

Pfeifer, J., dissents.

00-239. Cox v. Kiger.

Fairfield App. No. 99CA0041.

00-245. Stokes v. Berick.

Lake App. No. 98-L-094.

00-247. Anginoli v. Benenson Capital Co.

Hamilton App. No. C-980811.

F.E. Sweeney, J., dissents.

**00-259. State ex rel. Green River Display Co. v. Ohio Dept. of Commerce,
Div. of State Fire Marshal.**

Morrow App. No. CA889.

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

00-263. Blankenship v. S.H. Bell Co.

Columbiana App. Nos. 98CO14 and 98CO9. Discretionary appeal denied and motion for admission *pro hac vice* of Michael G. Zanic and Paul K. Stockman by Lawrence W. Stacey denied.

00-265. Erie Ins. Exchange v. Colony Dev. Corp.

Franklin App. Nos. 99AP-329 and 99AP-335.
Lundberg Stratton, J., dissents.

00-268. Waterford Products Co. v. Victor.

Lake App. No. 98-L-029.

00-289. Geier v. Natl. GG Industries, Inc.

Lake App. No. 98-L-172.

00-295. Berge v. Columbus Community Cable Access.

Franklin App. Nos. 99AP-75 and 99AP-76.
Douglas and Lundberg Stratton, JJ., dissent.

00-305. Smalley v. Ohio State Teachers Retirement Sys.

Franklin App. No. 98AP-1185.
Cook and Lundberg Stratton, JJ., dissent.

00-313. Smith v. Smith.

Franklin App. No. 98AP-1641.
Douglas and Lundberg Stratton, JJ., dissent.

00-316. Parsons v. Parsons.

Franklin App. No. 99AP-485.

00-319. Haywood v. Estate of Baluck.

Knox App. No. 99CA15.

00-322. Musgrave v. Ohio State Counselor & Social Worker Bd.

Franklin App. No. 99AP-314.

00-327. Begala v. PNC Bank, Ohio, N.A.

Hamilton App. No. C-990033.

00-329. Manogg v. Stickle.
Licking App. No. 99CA56.

00-332. Trochelman v. Cauffiel Machinery Corp.
Lucas App. No. L-99-1098.
Douglas and F.E. Sweeney, JJ., dissent.

00-333. Campbell v. Johnson.
Franklin App. No. 99AP-483.
Moyer, C.J., and Cook, J., dissent.

00-337. State v. Rittenhouse.
Fayette App. No. CA99-02-006.
Pfeifer, J., dissents.

00-339. Podany v. Real Estate Mtg. Corp. Escrow Co.
Cuyahoga App. No. 75307.
Douglas and Resnick, JJ., dissent.

00-343. Moubray v. Moubray.
Brown App. No. CA99-04-006.

00-360. Estate of Kemp v. Chu Bros./Charter House Inn, Inc.
Cuyahoga App. No. 74956.
Pfeifer, J., dissents.

RECONSIDERATION DOCKET

99-2297. State v. Kinley.
Clark App. No. 99CA20. Reported at 88 Ohio St.3d 1444, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

99-2321. State v. Taylor.
Cuyahoga App. No. 75352. Reported at 88 Ohio St.3d 1444, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.
Resnick, J., not participating.

00-37. State v. Hamilton.

Summit App. No. 19214. Reported at 88 Ohio St.3d 1444, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

DISCIPLINARY DOCKET

00-348. Disciplinary Counsel v. Evans.

On motion to supplement the board papers. Motion granted.

Moyer, C.J., Douglas and Pfeifer, JJ., not participating.