

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

July 11, 2002

MERIT DECISIONS WITHOUT OPINIONS

2002-0983. State ex rel. Cuyahoga Cty. Sheriff's Dept. v. State Emp. Relations Bd.

In Prohibition. This cause originated in this court on the filing of a complaint for a writ of prohibition. Upon consideration of the complaint and relators' motion for issuance of peremptory writ,

IT IS ORDERED by the court that the relators' motion be, and hereby is, denied.

IT IS FURTHER ORDERED by the court, sua sponte, that this cause be, and hereby is, dismissed.

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

MOTION AND PROCEDURAL RULINGS

1985-0712. State v. Buell.

Cuyahoga App. No. 48621. Upon consideration of appellee's motion to set execution date,

IT IS ORDERED by the court that the motion to set execution date be, and hereby is, granted.

IT IS HEREBY ORDERED by this court that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Wednesday, the 25th day of September, 2002, in accordance with the statutes so provided.

IT IS FURTHER ORDERED that a certified copy of this entry and a warrant under seal of this court be duly certified to the Warden of the Southern Ohio

Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Cuyahoga County.

1998-1983. State v. LaMar.

Lawrence App. No. 95CA31. Upon consideration of the motion filed by counsel for appellant to stay the execution of sentence in the above-styled cause pending the timely filing of a petition for a writ of certiorari in the Supreme Court of the United States and pending the exhaustion of state post-conviction remedies,

IT IS ORDERED by the court that said motion be, and hereby is, granted.

IT IS FURTHER ORDERED by the court that compliance with the mandate and execution of sentence be, and hereby are, stayed pending the timely filing of the petition in the Supreme Court of the United States.

IT IS FURTHER ORDERED that if such petition is timely filed, this stay shall continue for an indefinite period pending final disposition of this cause by the Supreme Court of the United States.

IT IS FURTHER ORDERED by the court that this stay shall remain in effect until exhaustion of all state post-conviction proceedings, including any appeals.

IT IS FURTHER ORDERED that counsel for the appellant and for the appellee shall notify this court upon a final disposition by the Supreme Court of the United States or when all proceedings for post-conviction relief before courts of this state have been exhausted, whichever occurs later.

1999-0093. State v. Hanna.

Warren C.P. No. 98CR17677. Upon consideration of the motion filed by counsel for appellant to stay the execution of sentence in the above-styled cause pending the timely filing of a petition for a writ of certiorari in the Supreme Court of the United States,

IT IS ORDERED that said motion be, and hereby is, granted.

IT IS FURTHER ORDERED that the compliance with the mandate and the execution of sentence be, and hereby are, stayed pending the timely filing of the petition in the Supreme Court of the United States.

IT IS FURTHER ORDERED that if such petition is timely filed, this stay shall continue for an indefinite period pending final disposition of this cause by the Supreme Court of the United States.

1999-0958. State v. Yarbrough.

Shelby App. No. 17-97-03. Upon consideration of the motion filed by counsel for appellant to stay the execution of sentence in the above-styled cause pending the

timely filing of a petition for a writ of certiorari in the Supreme Court of the United States,

IT IS ORDERED that said motion be, and hereby is, granted.

IT IS FURTHER ORDERED that the compliance with the mandate and the execution of sentence be, and hereby are, stayed pending the timely filing of the petition in the Supreme Court of the United States.

1999-1511. State v. Thomas.

Lucas App. No. L-96-020. This cause is pending before the court as an appeal from the Court of Appeals for Lucas County. Upon consideration of appellant's June 24, 2002 and July 1, 2002 motions for leave to file statement of additional authorities,

IT IS ORDERED by the court that the motions for leave to file statement of additional authorities be, and hereby are, granted, and appellant may file the citations only to the additional authorities within 7 days of the date of this entry.

2002-0262. Penn Traffic Co. v. AIU Ins. Co.

Pike App. No. 00CA653, 2001-Ohio-2567. This cause is pending before the court on the certification of conflict by the Court of Appeals for Pike County. On April 3, 2002, this court issued an entry ordering, inter alia, that this cause be consolidated with Supreme Court case No. 2001-1891, *Penn Traffic Co. v. AIU Ins. Co.*, and that the parties combine the briefing of case Nos. 2001-1891 and 2002-0262. On June 19, 2002, and June 21, 2002, respectively, appellees/cross-appellants Cincinnati Insurance Company and Federal Insurance Company filed stipulations to extensions of time to file second merit briefs in case No. 2001-1891 only. Accordingly,

IT IS ORDERED by the court, sua sponte, that appellees/cross-appellants Cincinnati Insurance Company and Federal Insurance Company are granted extensions of time to file second merit briefs in case No. 2002-0262 and that those briefs shall be filed on or before July 15, 2002. The parties shall file an original of their respective briefs in each case and eighteen copies; and the parties shall otherwise comply with this court's April 3, 2002 order and the requirements of S.Ct.Prac.R. VI.

Cook, J., not participating.

2002-0701. State ex rel. Tamco Distrib. Co. v. Indus. Comm.

Franklin App. No. 01AP-874. This cause is pending before the court as an appeal from the Court of Appeals for Franklin County. Upon consideration of the joint motion for extension of time to file appellee's merit brief pending settlement pursuant to S.Ct.Prac.R. XIV(6)(C),

IT IS ORDERED by the court that the motion for extension of time be, and hereby is, granted, and appellees' merit brief is due on or before August 26, 2002.

2002-0900. State v. Lozier.

Homes App. No. 01CA21, 2002-Ohio-1671. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the following issue:

"Whether the culpable mental state of recklessness applies to R.C. 2925.03(C)(5)(b)?"

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

The conflict case is *State v. Rogers* (Apr. 24, 1999), Summit App. No. 19176.

2002-0932. Westfield Ins. Co. v. Galatis.

Summit App. No. 20784, 2002-Ohio-1502. 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' Journal Entry filed May 10, 2002:

"Whether the inclusion of a 'Broadened Coverage Endorsement,' adding individual named insureds to a commercial motor vehicle liability policy, eliminates any ambiguity over the use of the term 'you' therein?"

F.E. Sweeney, J., dissents.

The conflict cases are *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903, and *Still v. Indiana Ins. Co.*, Stark App. No. 2001CA00300, 2002-Ohio-1004.

2002-0961. Cincinnati Gas & Elec. Co. v. Clermont Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 98-K-707 and 98-K-708. This cause is pending before the court as an appeal from the Board of Tax Appeals. Upon consideration of appellant's motion for extension of time to file appellant's merit brief pending settlement pursuant to S.Ct.Prac.R. XIV(6)(C),

IT IS ORDERED by the court that the motion for extension of time be, and hereby is, granted, and appellant's merit brief is due on or before August 21, 2002.

2002-1120. Walker v. Kilbane Koch.

Cuyahoga App. No. 81131, 2002-Ohio-2620. This cause was filed as a discretionary appeal and claimed appeal of right. Upon consideration of appellant's jurisdictional memorandum, it is determined by the court that this cause originated in the court of appeals and therefore should proceed as an appeal of right pursuant to S.Ct.Prac.R. II(1)(A)(1).

IT IS ORDERED by the court that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Cuyahoga County and the parties shall proceed in accordance with S.Ct.Prac.R. VI.

2002-1148. State ex rel. Kimbrough v. Greene.

Cuyahoga App. No. 81172, 2002-Ohio-2750. This cause was filed as a claimed appeal of right. Upon consideration of appellant's jurisdictional memorandum, it is determined by the court that this cause originated in the court of appeals and therefore should proceed as an appeal of right pursuant to S.Ct.Prac.R. II(1)(A)(1).

IT IS ORDERED by the court that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Cuyahoga County and the parties shall proceed in accordance with S.Ct.Prac.R. VI.

APPEALS NOT ACCEPTED FOR REVIEW

2002-0208. Wyczalek v. Rowe Constr. Serv. Co.

Erie App. No. E-00-059, 2001-Ohio-3104. Discretionary appeal and cross-appeal not allowed.

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

Dana A. Deshler, Jr., J., of the Tenth Appellate District, sitting for Resnick, J.

2002-0584. Zurcher v. Natl. Sur. Corp.

Stark App. No. 2001CA00197, 2002-Ohio-901.

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

DISCIPLINARY CASES

2001-2231. Cleveland Bar Assn. v. Harris.

Upon consideration of respondent's motion to supplement the record,

IT IS ORDERED by the court that the motion to supplement the record be, and hereby is, granted.

Cook, J., dissents.

IT IS FURTHER ORDERED by the court that leave to supplement the record is limited to the filing of two additional medical reports, which shall be filed within 10 days from the date of this entry.

Cook, J., dissents.

MISCELLANEOUS DISMISSALS

2002-0274. Premier Health Care Serv., Inc. v. Schneiderman.

Montgomery App. No. 18795, 2001-Ohio-7087. This cause is pending before the court as a discretionary appeal. Upon consideration of appellants' application for dismissal,

IT IS ORDERED by the court that the application for dismissal be, and hereby is, granted.

ACCORDINGLY, IT IS FURTHER ORDERED by the court that this cause be, and hereby is, dismissed.

2002-0602. Cochran v. Pub. Util. Comm.

Public Utilities Commission, No. 00-970-TP-CSS. This cause is pending before the court as an appeal from the Public Utilities Commission of Ohio. It appears from the records of this court that appellant has not filed a merit brief, due June 25, 2002, in compliance with the Rules of Practice of the Supreme Court and therefore has failed to prosecute this cause with the requisite diligence. Upon consideration thereof,

IT IS ORDERED by the court that this cause be, and hereby is, dismissed, sua sponte.

2002-0657. AEI Real Estate Fund XVIII, LP v. Franklin Cty. Aud.

Board of Tax Appeals, No. 00-J-2187. This cause is pending before the court as an appeal from the Board of Tax Appeals. Upon consideration of the joint motion to remand case to Board of Tax Appeals upon settlement,

IT IS ORDERED by the court that the motion to remand case be, and hereby is, granted, and this cause is remanded to the Board of Tax Appeals for entry of an order.

IT IS FURTHER ORDERED that this cause be, and hereby is, dismissed.