

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

May 12, 2004

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### MERIT DECISIONS WITH OPINIONS

**2002-1550. *White v. Conrad*, 2004-Ohio-2148.**

Medina App. No. 3287M, 2002-Ohio-3754. Judgment reversed and cause remanded.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur.

O'Donnell, J., dissents.

**2002-1716. *State v. Harwell*, 2004-Ohio-2149.**

Lucas App. No. L-00-1356, 2002-Ohio-4349. Judgment affirmed.

Gwin, F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur.

Moyer, C.J., and O'Donnell, J., dissent.

W. Scott Gwin, J., of the Fifth Appellate District, sitting for Resnick, J.

**2003-0053. *State v. Leach*, 2004-Ohio-2147.**

Hamilton App. No. C-020106, 150 Ohio App.3d 567, 2002-Ohio-6654. Judgment affirmed and cause remanded.

Moyer, C.J., Resnick, F.E. Sweeney, Lundberg Stratton and O'Donnell, JJ., concur.

Pfeifer, J., concurs and concurs separately.

O'Connor, J., concurs separately.

**2003-0059. *State ex rel. Rash v. Jackson*, 2004-Ohio-2053.**

Warren App. No. CA2002-09-100. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-0753. State ex rel. Frazier v. Brigano, 2004-Ohio-2139.**

Warren App. No. CA2003-01-001. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-1228. In re Application of Bagne, 2004-Ohio-2070.**

On Report of the Board of Commissioners on Character and Fitness of the Supreme Court, No. 244.

Alexander A. Bagne may reapply for the February 2005 bar examination.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-1242. State ex rel. Baker Concrete Constr., Inc. v. Indus. Comm., 2004-Ohio-2114.**

Franklin App. No. 02AP-989, 2003-Ohio-2883. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-1305. State ex rel. Jordan v. Indus. Comm., 2004-Ohio-2115.**

Franklin App. No. 02AP-1110, 2003-Ohio-2945. Judgment reversed and cause returned to the commission.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-1529. Cuyahoga Cty. Bar Assn. v. Newman, 2004-Ohio-2068.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-87.

Joel Ivan Newman, Attorney Registration No. 0038433, is suspended from the practice of law for one year with six months stayed on conditions.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-1661. State ex rel. Stiles v. School Emp. Retirement Sys., 2004-Ohio-2140.**

Franklin App. No. 02AP-1333, 2003-Ohio-4137. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-2087. State ex rel. Scruggs v. Sadler, 2004-Ohio-2054.**

Franklin App. No. 01AP-408, 2003-Ohio-5941. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-2134. State ex rel. Bunting v. Haas, 2004-Ohio-2055.**

Stark App. No. 2003CA00328. Judgment reversed in part, remanded in part, and affirmed in part.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-2153. Jennings v. Jackson, 2004-Ohio-2052.**

Warren App. No. CA2003-09-092. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

## **MERIT DECISIONS WITHOUT OPINIONS**

**2004-0427. State ex rel. Harris v. Coble.**

In Mandamus. On answer of respondent and motion for leave to file a response to answer of respondents. On S.Ct.Prac.R. X(5) determination, cause dismissed. Motion for leave denied as moot.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2004-0528. Halliwill v. State Farm Ins. Co.**

Summit App. No. 21488, 2003-Ohio-6809. 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, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

## **MOTION AND PROCEDURAL RULINGS**

**1986-1130. State v. Zuern.**

Hamilton App. No. C-840803. On motion to set execution date. Motion granted.

**1999-1218. State v. Williams.**

Lucas C.P. No. CR972268. On joint request for oral argument. Request granted.  
O'Donnell, J., not participating.

**2003-1648. State ex rel. Adams v. Aluchem, Inc.**

Franklin App. No. 02AP-1210, 2003-Ohio-4510. On request for oral argument.  
Request granted.

**2003-2142. State ex rel. Lewis v. Collins.**

In Mandamus. On motion to show cause, upon Patrick J. Piccininni, why he should not be held in contempt. Motion denied.

On motion for leave of court to file supplemental pleading pursuant to S.Ct.Prac.R. XIV(4) and Civ.R. 15(E). Motion denied as moot.

Moyer, C.J., dissents.

**2003-2159. Constellation NewEnergy, Inc. v. Pub. Util. Comm.**

Public Utilities Commission, No. 02-2779-EL-ATA. On motion for leave to intervene of Dayton Power and Light Company and motion for leave to intervene of Industrial Energy Users-Ohio. Motions granted.

O'Donnell, J., dissents.

**2004-0510. State v. Porterfield.**

Trumbull App. No. 2002-T-0045, 2004-Ohio-520. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 5 of the court of appeals' Judgment Entry filed March 19, 2004:

"Whether the language of R.C. 2953.08(D) prohibits appellate review of a trial court's sentence when the defendant is convicted of aggravated murder and sentenced pursuant to a jointly-recommended sentence."

F.E. Sweeney, J., dissents.

Cause consolidated with 2004-0417, *State v. Porterfield*, Trumbull App. No. 2002-T-0045, 2004-Ohio-520.

F.E. Sweeney, J., dissents.

The conflict case is *State v. Owens* (Sept. 18, 2001), 10th Dist. No. 00AP-859, 2001 WL 1084167.

**2004-0519. State v. Sanders.**

Cuyahoga App. No. 76620. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2004-0537. State v. Glavic.**

Lake App. Nos. 2001-L-177 and 2001-L-179, 2003-Ohio-6961. On motion for leave to file delayed appeal. Motion granted.

Moyer, C.J., and O'Connor, J., concur but would also hold for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289.

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

**2004-0538. State v. Cameron.**

Tuscarawas App. No. 2003AP040030, 2004-Ohio-974. On motion for stay of execution of court of appeals' judgment dated February 26, 2004. Motion denied.

**2004-0541. State v. Griffith.**

Trumbull App. No. 2001-T-0136, 2003-Ohio-6980. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Lundberg Stratton and O'Donnell, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2004-0144. State v. Willis.**

Cuyahoga App. No. 82313, 2003-Ohio-6329. Discretionary appeal accepted; cause held for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587; and briefing schedule stayed.

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

**2004-0184. State v. Wilburn.**

Cuyahoga App. No. 82573, 2003-Ohio-6495. Discretionary appeal accepted; cause held for the decisions in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587; and 2003-0567, *State v. Finger*, Cuyahoga App. No. 80691, 2003-Ohio-402; and briefing schedule stayed.

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

**2004-0214. Groob v. KeyBank.**

Hamilton App. No. C-020191, 155 Ohio App.3d 510, 2003-Ohio-6915.

F.E. Sweeney and O'Donnell, JJ., dissent.

Resnick, J., not participating.

**2004-0253. Shell v. Ohio Veterinary Med. Licensing Bd.**

Geauga App. No. 2002-G-2456, 2003-Ohio-6970.

Resnick, F.E. Sweeney and O'Donnell, JJ., dissent.

**2004-0261. Sandusky Dock Corp. v. Jones.**

Franklin App. No. 03AP-98, 2003-Ohio-7027.

F.E. Sweeney, Pfeifer and O'Donnell, JJ., dissent.

**2004-0417. State v. Porterfield.**

Trumbull App. No. 2002-T-0045, 2004-Ohio-520. Discretionary appeal not accepted.

Moyer, C.J., dissents and would accept on Proposition of Law No. II.

Lundberg Stratton, J., dissents and would accept on Proposition of Law No. IV.

Discretionary cross-appeal accepted and cause consolidated with 2004-0510, *State v. Porterfield*, Trumbull App. No. 2002-T-0045, 2004-Ohio-520.

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

**APPEALS NOT ACCEPTED FOR REVIEW**

**2004-0120. In re La. B.**

Cuyahoga App. No. 81981, 2003-Ohio-6852.

**2004-0148. State v. Vaughn.**

Carroll App. No. 683, 2003-Ohio-7023.

Moyer, C.J., and O'Donnell, J., dissent.

**2004-0150. Davenport v. Univ. of Cincinnati.**

Hamilton App. No. C-020671.

**2004-0157. Bright v. Family Medicine Found., Inc.**

Franklin App. No. 02AP-1443, 2003-Ohio-6652.

Pfeifer, J., dissents.

**2004-0160. State v. Harris.**

Lorain App. No. 03CA008305, 2003-Ohio-7180.

**2004-0163. Tharp v. Berdanier.**

Summit App. No. 21473, 2003-Ohio-6589.

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

**2004-0168. State v. Moyer.**

Franklin App. No. 03AP-468, 2003-Ohio-6656.

**2004-0170. State v. Seals.**

Hamilton App. No. C-030230.

Moyer, C.J., and O'Donnell, J., dissent.

**2004-0172. Breithaupt v. Kenyon College.**

Knox App. No. 03CA000017.

**2004-0181. State v. Cochran.**

Coshocton App. No. 03CA01, 2003-Ohio-6863.

**2004-0182. State v. Jacocks.**

Stark App. No. 2002CA00359, 2003-Ohio-6839.

**2004-0185. State v. Watts.**

Cuyahoga App. No. 82601, 2003-Ohio-6480.

Lundberg Stratton, J., dissents, would accept, and would hold for the decision in 2003-0567, *State v. Finger*, Cuyahoga App. No. 80691, 2003-Ohio-402.

O'Connor, J., dissents, would accept, and would hold for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587.

**2004-0189. Diemert v. Diemert.**

Cuyahoga App. No. 82597, 2003-Ohio-6496.

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

**2004-0194. Kogler v. Daniel Bros. Fuel Co.**

Lake App. No. 2002-L-122, 2003-Ohio-6774.

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

**2004-0195. Faulkner v. Integrated Serv. Network, Inc.**

Cuyahoga App. Nos. 81877 and 83083, 2003-Ohio-6474.

**2004-0196. Eisele v. PolyOne, Inc.**

Lorain App. No. 03CA008248, 2003-Ohio-6577.

F.E. Sweeney, J., dissents.

**2004-0197. Hawkins v. Crestwood Local School Dist.**  
Portage App. No. 2002-P-0038, 2003-Ohio-6747.

**2004-0198. Hartley v. Allstate Ins. Co.**  
Summit App. No. 21542, 2003-Ohio-6810.  
Resnick and Pfeifer, JJ., dissent.

**2004-0199. Zuzan v. Shutrump.**  
Mahoning App. No. 03MA50, 155 Ohio App.3d 589, 2003-Ohio-7285.

**2004-0200. Mason v. Royal Ins. Co. of Am.**  
Stark App. No. 2003CA00021, 2003-Ohio-6842.

**2004-0201. Mason v. Am. & Foreign Ins. Co.**  
Stark App. No. 2003CA00028, 2003-Ohio-6843.  
Resnick and F.E. Sweeney, JJ., dissent.

**2004-0202. State v. Donsante.**  
Warren App. No. CA2003-04-042.

**2004-0203. Dickerson v. State Farm Mut. Auto. Ins. Co.**  
Defiance App. No. 4-03-12, 2003-Ohio-6704.  
Lundberg Stratton, J., dissents.

**2004-0204. Kershner v. Kershner.**  
Butler App. No. CA2002-09-226, 2003-Ohio-6780.

**2004-0206. State v. Monk.**  
Knox App. No. 03CA12, 2003-Ohio-6799.  
Pfeifer, J., dissents.

**2004-0207. Cross v. Horace Mann-Teachers Ins.**  
Ashland App. No. 03COA022, 2003-Ohio-6909.  
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2004-0209. State v. Eskridge.**  
Cuyahoga App. No. 82619, 2003-Ohio-6869.  
Lundberg Stratton, J., dissents.



**2004-0210. State v. Farley.**

Lawrence App. No. 02CA32, 2003-Ohio-7338.

**2004-0211. Easterwood v. English.**

Cuyahoga App. No. 82538, 2003-Ohio-6859.

Resnick, J., dissents.

**2004-0213. State v. Buehner.**

Cuyahoga App. No. 81722, 2004-Ohio-463.

**2004-0215. Aey v. Bargainer-Ragland.**

Mahoning App. No. 03MA99, 2003-Ohio-7041.

**2004-0218. Carper v. Snodgrass.**

Lucas App. No. L-03-1065, 2003-Ohio-6975.

F.E. Sweeney, J., dissents.

**2004-0220. State v. Tate.**

Cuyahoga App. No. 82344, 2003-Ohio-6856.

Resnick, Lundberg Stratton and O'Donnell, JJ., dissent.

**2004-0221. 225 East Sixth, LLC v. Marinakis.**

Hamilton App. No. C-020805.

**2004-0222. Wallace v. Ohio Dept. of Commerce, Div. of State Fire Marshal.**

Franklin App. No. 99AP-1303, 2003-Ohio-6935.

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

**2004-0223. State v. Walker.**

Franklin App. No. 03AP-232, 2003-Ohio-6936.

**2004-0224. Barnby v. Natl. Union Fire Ins. Co. of Pittsburgh, PA.**

Medina App. No. 03CA0022M, 2003-Ohio-6815.

Resnick and Pfeifer, JJ., dissent.

**2004-0226. Johnson v. Hundley.**

Summit App. No. 21402, 2003-Ohio-6812.

**2004-0227. Tripp v. Beverly Enterprises-Ohio, Inc.**

Summit App. No. 21506, 2003-Ohio-6821.

**2004-0228. State v. Lowe.**

Summit App. No. 21426, 2003-Ohio-6807.

**2004-0229. State v. Dennis.**

Trumbull App. No. 2002-T-0133.

**2004-0230. State v. Randlett.**

Franklin App. Nos. 03AP-385, 03AP-386, 03AP-387, and 03AP-388, 2003-Ohio-6934.

**2004-0232. Tate v. Adena Regional Med. Ctr.**

Ross App. No. 03CA2699, 155 Ohio App.3d 524, 2003-Ohio-7042.

**2004-0233. Collins v. Natl. City Bank.**

Montgomery App. No. 19884, 2003-Ohio-6893.

Pfeifer, J., dissents.

**2004-0234. State v. Caldwell.**

Lake App. No. 2002-L-142.

**2004-0236. State v. Mays.**

Cuyahoga App. No. 82474, 2003-Ohio-6949.

**2004-0246. Lima v. Fraternal Order of Police, Ohio Labor Council, Inc.**

Allen App. No. 1-02-88, 2003-Ohio-6983.

**2004-0248. Moore v. Moore.**

Cuyahoga App. No. 82603, 2003-Ohio-6868.

**2004-0249. Toto v. St. Paul Fire & Marine Ins. Co.**

Cuyahoga App. No. 82874, 2003-Ohio-6626.

**2004-0250. State v. Weiser.**

Franklin App. No. 03AP-95, 2003-Ohio-7034.

**2004-0251. Vanatta v. Akers.**

Cuyahoga App. Nos. 82422 and 82361, 2003-Ohio-6615. Discretionary appeal not accepted.

O'Connor, J., would accept Proposition of Law No. I.

Moyer, C.J., and Lundberg Stratton, J., would accept all propositions of law.

**2004-0252. State v. Hill.**

Hamilton App. No. C-030384.

**2004-0254. State v. Tanner.**

Muskingum App. No. CT20030025, 2003-Ohio-7274.

**2004-0255. State v. Byrd.**

Lorain App. No. 03CA008230, 2003-Ohio-7168.

**2004-0256. State v. Pishok.**

Seneca App. No. 13-03-43, 2003-Ohio-7118. Discretionary appeal not accepted and motion for stay of consideration of the jurisdictional memoranda denied as moot.

**2004-0257. State v. Smith.**

Cuyahoga App. No. 83022, 2003-Ohio-7076.

Lundberg Stratton and O'Donnell, JJ., dissent.

**2004-0259. State v. Norman.**

Franklin App. No. 03AP-966.

**2004-0260. Mansfield City Council v. Richland Cty. Council AFL-CIO.**

Richland App. No. 03CA55.

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

**2004-0262. State v. Sarver.**

Champaign App. No. 2003CA10, 2003-Ohio-7096.

**2004-0265. Doran v. Northmont Bd. of Edn.**

Montgomery App. No. 19956, 2003-Ohio-7097.

F.E. Sweeney, J., dissents.

**2004-0266. State v. Blalock.**

Cuyahoga App. No. 82941, 2003-Ohio-6627.

**2004-0300. State v. Thompson.**

Cuyahoga App. No. 82937, 2003-Ohio-7070.

Lundberg Stratton and O'Connor, JJ., dissent and would accept.

O'Donnell, J., dissents, would accept, and would hold for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587.

**2004-0335. State v. Scott-Hoover.**

Crawford App. No. 3-03-20, 2004-Ohio-97.

O'Donnell, J., dissents.

**2004-0346. State v. Biondo.**

Portage App. No. 2003-P-0015, 2004-Ohio-528.

O'Donnell, J., dissents.

**2004-0350. State v. Rexroad.**

Summit App. No. 21862.

**2004-0365. State v. Austin.**

Summit App. No. 21850.

O'Connor, J., not participating.

**2004-0377. Daniels v. Citizens Ins. Co. of Ohio.**

Madison App. No. CA2003-06-023, 2004-Ohio-93.

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

**2004-0397. State v. Paynter.**

Muskingum App. No. CT20030014, 2003-Ohio-5367.

**2004-0461. State v. Washington.**

Franklin App. No. 98AP-1489.

**2004-0466. In re Kimbrough.**

Cuyahoga App. No. 83992.

Pfeifer, J., dissents.

**2004-0494. In re D.B.**

Cuyahoga App. No. 82450, 2004-Ohio-625 and 2004-Ohio-996.

**RECONSIDERATION OF PRIOR DECISIONS**

**2001-0253. State v. Bryan.**

Cuyahoga C.P. No. CR393660. Reported at 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

**2002-1477. H.R. Options, Inc. v. Wilkins, 2004-Ohio-2085.**

Board of Tax Appeals, No. 01-M-808. Reported at 100 Ohio St.3d 373, 2004-Ohio-1, 800 N.E.2d 740. On motion for reconsideration or clarification. Motion for clarification granted. See opinion.

Moyer, C.J., Resnick, F.E. Sweeney, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

Pfeifer, J., dissents.

**2003-0568. Verizon North, Inc. v. Pub. Util. Comm.**

Public Utilities Commission, No. 00-127-TP-COI. Reported at 101 Ohio St.3d 91, 2004-Ohio-44, 801 N.E.2d 456. On amended motion for reconsideration. Amended motion denied.

Pfeifer, J., dissents.

Resnick and O'Donnell, JJ., not participating.

**2003-2049. Campbell v. Westfield Ins. Co.**

Franklin App. No. 02AP-1369, 2003-Ohio-5448. Reported at 101 Ohio St.3d 1488, 2004-Ohio-1293, 805 N.E.2d 539. On motion for reconsideration. Motion denied.

Lundberg Stratton and O'Connor, JJ., dissent, would grant, and would hold for the decision in 2003-2079, *Hollon v. Clary*, Montgomery App. No. 19826, 2003-Ohio-5734.

**2003-2176. Dukes v. Hunter.**

Tuscarawas App. No. 2003AP040035, 2003-Ohio-6401. Reported at 101 Ohio St.3d 1490, 2004-Ohio-1293, 805 N.E.2d 540. On motion for reconsideration. Motion denied.

**2003-2182 and 2004-0003. State v. Back.**

Butler App. No. CA2003-01-011, 2003-Ohio-5985. Reported at 101 Ohio St.3d 1485, 2004-Ohio-1293, 805 N.E.2d 537; and 101 Ohio St.3d 1487, 2004-Ohio-1293, 805 N.E.2d 538. On motion for reconsideration of decision declining to hear some issues and motion to vacate briefing stay. Motions denied.

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

O'Donnell, J., would accept Propositions of Law Nos. I and II and would vacate the briefing stay.

**2004-0314. Holt v. Warden, Franklin Cty. Pre-Release Ctr.**

In Habeas Corpus. Reported at 101 Ohio St.3d 1484, 2004-Ohio-1293, 805 N.E.2d 536. On motion for reconsideration. Motion denied.

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