

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

September 1, 2004

MERIT DECISIONS WITHOUT OPINIONS

2004-0905. State ex rel. Tigner v. Morgan Cty. Bd. of Elections.

In Mandamus. On complaint and respondent's answer, brief and affidavit. Sua sponte, cause dismissed.

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

Pfeifer, J., dissents and would grant the writ.

2004-0910. State ex rel. Bunkley v. Ohio Adult Parole Auth.

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

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

2004-1086. State ex rel. Richard v. Ohio Dept. of Rehab. & Corr.

In Mandamus. On motion to dismiss and motion for the court to exercise its disciplinary responsibilities. Motion to dismiss sustained. Motion to exercise disciplinary responsibilities denied. Cause dismissed.

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

O'Donnell, J., not participating.

2004-1110. Smith v. Leis.

In Habeas Corpus. On petition for writ of habeas corpus of Garey Smith. Sua sponte, cause dismissed.

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

2004-1124. State ex rel. Konteh v. Hutchins.

In Habeas Corpus. On petition for writ of habeas corpus of John Hutchins. Sua sponte, cause dismissed.

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

2004-1125. State ex rel. Konteh v. Miller.

In Habeas Corpus. On petition for writ of habeas corpus of Thomas Miller. Sua sponte, cause dismissed.

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

2004-1164. State ex rel. Blade v. Konteh.

In Habeas Corpus. On petition for writ of habeas corpus of Douglas Blade. Sua sponte, cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

2000-1833. State v. Jordan.

Lucas C.P. No. CR-98-2736. On application for reopening under S.Ct.Prac.R. XI(5). Motion denied.

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

Public Utilities Commission, No. 02-2779-EL-ATA. On motion for leave to intervene of Cincinnati Gas & Electric Company. Motion granted.

2004-0001. Academy of Medicine of Cincinnati v. Aetna Health, Inc.

Hamilton App. Nos. C-030109, C-030110 and C-030111, 155 Ohio App.3d 310, 2003-Ohio-6194. On motion for admission pro hac vice of Robin S. Conrad and Stephanie A. Martz by E. Joel Wesp. Motion granted.

Pfeifer, J., dissents.

2004-0041. State v. Elmore.

Licking C.P. 02CR275. This cause is pending before the court as a death penalty appeal from the Court of Common Pleas of Licking County. Upon consideration of appellant's motion for leave to file supplemental Proposition of Law 17 instanter,

IT IS ORDERED by the court that the motion be stayed until further notice.

2004-0305. Monongahela Power Co. v. Pub. Util. Comm.

Public Utilities Commission, No. 03-1104-EL-ATA. On motion for leave to intervene of Industrial Energy Users-Ohio. Motion granted.

2004-0420. State ex rel. Howard v. Doneghy.

Lucas App. No. L-03-1344, 2004-Ohio-684. See 102 Ohio St.3d 355, 810 N.E.2d 958, 2004-Ohio-3207. On bill and documentation in support of attorneys' fees and expenses filed by Judge Doneghy and Lucas County Court of Common Pleas in response to the court's entry of July 7, 2004. Judge Doneghy and the Lucas County Court of Common Pleas are awarded \$816.

Resnick, J., dissents.

2004-0900. State v. Thomas.

Cuyahoga App. No. 82674, 2004-Ohio-1907. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the two issues stated in the court of appeals' Journal Entry filed May 5, 2004:

"Issue 1: In order to constitute 'robbery' under R.C. 2911.02, must the force attendant to the theft offense be inflicted in furtherance of a purpose to deprive another of property?", and

"Issue 2: When a person who has committed a theft offense abandons the subject property and submits to apprehension by authorities, if even for a brief time, can the use of any subsequent force to resist further detention constitute the offense of robbery under R.C. 2911.02?"

The conflict cases are *State v. Turner* (Sept. 27, 1983), Franklin App. No. 83AP-26, 1983 WL 3701 (Issue 1) and *State v. Akers* (June 11, 1982), Wood App. No. WD-82-4, 1982 WL 6454 (Issue 2).

Resnick and O'Donnell, JJ., dissent.

2004-1044. State v. Adkins.

Franklin App. No. 04AP-178. On motion for leave to file a delayed appeal and motion to correct and amend the motion for leave to file a delayed appeal. Motions denied.

Pfeifer and O'Donnell, JJ., dissent.

2004-1061. State v. DeBoe.

Huron App. No. H-02-057, 2004-Ohio-403. On motion for leave to file a delayed appeal. Motion denied.

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

2004-1082. State v. Coulibaly.

Hamilton App. No. C-010788. On motion for leave to file a delayed appeal. Motion granted.

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

2004-1094. State v. Tillman.

Huron App. No. H-02-004, 2004-Ohio-1967. On motion for leave to file a delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2004-1138. State v. Walker.

Hamilton App. Nos. C-030195 and C-030206. On motion for leave to file a delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1149. State v. Little.

Hamilton App. No. C-030432, 2004-Ohio-2279. On motion for leave to file a delayed appeal. Motion denied.

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

2004-1150. State v. Lane.

Richland App. No. 03CA89, 2004-Ohio-2235. On motion for leave to file a delayed appeal. Motion granted.

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

2004-1160. State v. Snyder.

Auglaize App. No. 2-03-11, 2003-Ohio-5882. On motion for leave to file a delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1173. State v. Blackwood.

Cuyahoga App. No. 83208, 2004-Ohio-2160. On motion for leave to file a delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2004-1175. Humbert v. Borkowski.

Fulton App. No. F-04-012. On motion for stay of proceedings in the Court of Common Pleas, Fulton County, Ohio, pending ruling on discretionary appeal. Motion denied.

Moyer, C.J., and Resnick, J., dissent.

2004-1228. State v. Peoples.

Miami App. No. 04CA12. On motion for stay of court of appeals' judgment. Motion denied.

2004-1235. Borkowski v. Ebersole.

Fulton App. No. F-04-014. On emergency motion for stay of court of appeals' judgment. Motion denied.

Resnick, J., dissents.

2004-1264. In re Andy-Jones.

Franklin App. No. 03AP-1167, 2004-Ohio-3312. On motion for stay of enforcement of the judgment of the Court of Common Pleas, Franklin County, Ohio granting permanent custody and motion for order allowing visitation to continue pending ruling on discretionary appeal. Motions denied.

2004-1265. State v. Embry.

Cuyahoga App. No. 82998, 2004-Ohio-2986. On motion for stay of judgment of the court of appeals pending ruling on discretionary appeal. Motion granted.

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

2004-1267. State v. Fair.

Cuyahoga App. No. 82278, 2004-Ohio-2971. On motion for stay of judgment of the court of appeals ruling on the discretionary appeal. Motion granted.

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

2004-1290. Non-Employees of Chateau Estates Resident Assn. v. Chateau Estates, Ltd.

Clark App. No. 2004CA19. On motion for stay of judgment of the court of appeals pending ruling on the discretionary appeal. Motion denied.

Resnick, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2002-1864. State v. Hoffner.

Lucas App. No. L-01-1281, 2002-Ohio-5201.

Resnick, J., not participating.

2004-0451. State v. Richter.

Lake App. No. 2002-L-080, 2003-Ohio-6734.

2004-0603. State ex rel. Packard v. Coshocton Cty. Joint Vocational School Dist., Bd. of Edn.

Coshocton App. No. 02CA22, 2004-Ohio-1324. Discretionary appeal and cross-appeal denied.

O'Connor, J., dissents and would allow the discretionary appeal.

2004-0723. Covey v. Natural Foods, Inc.

Lucas App. No. L-03-1111, 2004-Ohio-1336. On discretionary appeal and motion to dismiss. Appeal and motion denied.

2004-0732. Mackin v. Am. States Ins. Co.

Lucas App. No. L-03-1216, 2004-Ohio-1335.

Pfeifer, J., dissents.

2004-0735. State ex rel. Petro v. Gitler.

Lucas App. No. L-03-1246.

2004-0743. State v. Frazier.

Cuyahoga App. No. 83024, 2004-Ohio-1121.

Resnick, J., dissents and would allow on Proposition of Law No. I only.

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

2004-0747. Rieman v. Congemi.

Cuyahoga App. No. 83187, 2004-Ohio-1269.

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

2004-0762. Espay v. Bud Brady Ford, Inc.

Cuyahoga App. No. 83734.

2004-0791. State v. Mayrides.

Franklin App. No. 03AP-347, 2004-Ohio-1623.

2004-0792. State v. Smith.

Washington App. No. 04CA2.

2004-0793. Gilliland v. Gilliland.

Vinton App. No. 02CA570.

2004-0794. State v. Serrano.

Lucas App. No. L-03-1096, 2004-Ohio-1640.

2004-0796. Internatl. Bhd. Of Electrical Workers, Loc. Union No. 8 v. Vaughn Industries, Inc.

Wood App. Nos. WD-03-028 and WD-03-048, 156 Ohio App.3d 644, 2004-Ohio-1655.

2004-0798. Mullins v. Inderbitzen.

Lucas App. No. L-03-1121, 2004-Ohio-1658.

Resnick, J., dissents.

2004-0799. Blair v. Boyle-Doe.

Lorain App. No. 03CA008339, 157 Ohio App.3d 17, 2004-Ohio-1876.

2004-0805. State v. Hill.

Cuyahoga App. No. 83078, 2004-Ohio-1248.

2004-0806. State v. Montgomery.

Montgomery App. No. 20036, 2004-Ohio-1699.

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

2004-0807. Greenwood Rehab., Inc. v. Thacker.

Lucas App. No. L-03-1213, 2004-Ohio-1643.

Resnick, J., dissents.

2004-0808. State v. Leach.

Cuyahoga App. No. 82836, 2004-Ohio-1675.

Moyer, C.J., dissents.

2004-0811. State v. Kajfasz.

Lucas App. No. L-04-1004.

O'Connor, J., dissents.

2004-0813. Residents of the Village of Country Hills v. Oak Hills Loc. School Dist. Bd. of Edn.

Hamilton App. No. C-030427, 2004-Ohio-1697.

Resnick and Pfeifer, JJ., dissent.

2004-0815. State v. Hall.

Lucas App. No. L-01-1374, 2004-Ohio-1654.
O'Donnell, J., dissents.

2004-0818. State v. Watson.
Summit App. No. 22024.

2004-0830. State v. Little.
Montgomery App. No. 19976, 2004-Ohio-1814.

2004-0834. State v. McLaughlin.
Franklin App. No. 03AP-393, 157 Ohio App.3d 1, 2004-Ohio-1780 and 2004-Ohio-2525.
Lundberg Stratton, J., dissents.

2004-0835. Pozniak v. Recknagel.
Lorain App. No. 03CA008320, 2004-Ohio-1753.

2004-0836. Fifth Third Bank of W. Ohio v. Shepard Grain Co., Inc.
Miami App. No. 2003CA40, 2004-Ohio-1816.
Resnick, J., not participating.

2004-0837. State v. Carley.
Cuyahoga App. No. 81001, 2004-Ohio-1901.

2004-0844. State v. Meek.
Lorain App. No. 03CA008315, 2004-Ohio-1981.

2004-0846. State v. Lockney.
Trumbull App. No. 2002-T-0107, 2004-Ohio-1846.

2004-0852. Summit Cty. v. Cuyahoga Falls.
Summit App. No. 21799, 2004-Ohio-1879.

2004-0853. State ex rel. Nunnally v. Oakwood.
Cuyahoga App. No. 83326, 2004-Ohio-1679.
O'Donnell, J., not participating.

2004-0854. Antolini v. Newton Falls Twp. Joint Fire Dist.
Trumbull App. No. 2003-T-0062, 157 Ohio App.3d 8, 2004-Ohio-1844.

2004-0857. Herbert v. Porter.

Seneca App. No. 13-03-53, 2004-Ohio-1851.

2004-0858. Ruthie B, Inc. v. Ohio Liquor Control Comm.

Franklin App. No. 03AP-964, 2004-Ohio-2502.

Pfeifer, J., dissents.

2004-0859. State v. Noble.

Ashtabula App. No. 2003-A-0007, 2004-Ohio-2313.

2004-0864. State v. Cunningham.

Miami App. No. 2003CA17, 156 Ohio App.3d 714, 2004-Ohio-1935.

Resnick, J., dissents.

2004-0865. State v. Mason.

Hamilton App. No. C-030669.

2004-0869. State v. Tarr.

Ottawa App. No. OT-03-010, 2004-Ohio-216.

2004-0870. Fitzpatrick v. Spencer.

Montgomery App. No. 20067, 2004-Ohio-1940.

2004-0872. State v. Merkle.

Hamilton App. Nos. C-020454 and C-030557, 2004-Ohio-1913.

2004-0875. State v. Day.

Cuyahoga App. No. 83138, 2004-Ohio-1449.

2004-0876. State v. Flannery.

Crawford App. No. 3-04-10.

2004-0881. State v. Knight.

Greene App. No. 2003CA14, 2004-Ohio-1941.

2004-0886. Miller v. Jackson Cty.

Jackson App. No. 03CA20, 2004-Ohio-3244.

Resnick, J., dissents.

2004-0889. Yaeger v. Yaeger.

Geauga App. No. 2002-G-2453, 2004-Ohio-1959.

2004-0890. State v. Denney.

Fairfield App. No. 03CA62, 2004-Ohio-2024.

Pfeifer, J., dissents.

2004-0893. Bettis v. Natl. Union Fire Ins. Co.

Stark App. No. 2003CA00251, 2004-Ohio-2172.

F.E. Sweeney, J., dissents.

2004-0894. Rose v. Rose.

Mercer App. No. 1-00-308, 2004-Ohio-1954.

2004-0895. State v. Gates.

Cuyahoga App. No. 82385, 2004-Ohio-1453.

O'Donnell, J., not participating.

2004-0903. Comer v. Early Auction Co.

Clermont App. No. CA2003-07-061, 2004-Ohio-2073.

2004-0904. Johnson v. Liberty Mut. Fire Ins. Co.

Franklin App. No. 03AP-674, 2004-Ohio-1979.

2004-0909. Grange Mut. Cas. Co. v. Tumbleson.

Scioto App. No. 03CA2898, 2004-Ohio-2180.

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

2004-0911. State v. Lovsey.

Fairfield App. No. 03CA1, 2004-Ohio-2112.

2004-0913. State v. Reid.

Cuyahoga App. No. 83206, 2004-Ohio-2018.

2004-0914. Ritchie's Food Distrib., Inc. v. Refrigerated Constr. Serv., Inc.

Pike App. No. 03CA713, 2004-Ohio-2261.

Lundberg Stratton, J., dissents.

2004-0916. In re Merker.

Montgomery App. No. 20098, 2004-Ohio-2045.

2004-0917. State v. White.

Cuyahoga App. No. 78190.

O'Donnell, J., not participating.

2004-0919. State v. Brumett.

Butler App. No. CA2003-05-135, 2004-Ohio-2211.

2004-0920. State v. Thompson.

Adams App. No. 03CA766, 2004-Ohio-2413.

Resnick and O'Connor, JJ., dissent.

2004-0921. Quinlan v. Children's Hosp. Med. Ctr.

Hamilton App. No. C-030320.

2004-0927. Evans v. Dayton Power & Light Co.

Adams App. No. 03CA763, 2004-Ohio-2183.

Lundberg Stratton, J., dissents and would allow on Proposition of Law Nos. II and III only.

2004-0930. State v. Leuvoy.

Fairfield App. No. 03CA66, 2004-Ohio-2232.

2004-0932. Kuhn v. ADD, Inc.

Fairfield App. No. 03CA065, 2004-Ohio-2230.

Resnick, J., dissents.

2004-0934. Benedict v. State Auto. Mut. Ins. Co.

Franklin App. No. 03AP-879, 2004-Ohio-2497.

Pfeifer, J., dissents.

2004-0950. State v. Lofton.

Montgomery App. No. 19852, 2004-Ohio-169.

2004-0970. State v. Potts.

Richland App. No. 00CA12.

2004-0972. State v. Thomas.

Cuyahoga App. No. 82674, 2004-Ohio-1907.

Moyer, C.J., F.E. Sweeney and O'Connor, JJ., dissent.

2004-0979. State v. Gibson.

Ashtabula App. No. 2002-A-0068, 2004-Ohio-2599.

2004-0982. State v. Golden.

Hamilton App. Nos. C-030460 and C-030461, 2004-Ohio-2276.

Pfeifer, J., dissents.

2004-0989. State v. Loper.

Cuyahoga App. No. 81297, 2003-Ohio-3213.

2004-0999. State v. Howell.

Montgomery App. No. 19708, 2004-Ohio-2423.

2004-1016. Evans Property, Inc. v. Altieri.

Geauga App. No. 2003-G-2494, 2004-Ohio-2305.

2004-1026. State v. Burns.

Montgomery App. No. 20385.

2004-1041. State v. Gibson.

Summit App. No. 21838, 2004-Ohio-2511.

2004-1119. In re Andy-Jones.

Franklin App. No. 03AP-1231, 2004-Ohio-3312.

Resnick, J., dissents.

2004-1229. In re Ross.

Geauga App. No. 2003-G-2549, 2004-Ohio-3689.

RECONSIDERATION OF PRIOR DECISIONS

2002-0506. State v. Fitzpatrick.

Hamilton C.P. B0104117. Reported at 102 Ohio St.3d 321, 810 N.E.2d 927, 2004-Ohio-3167. On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

2004-0271. Helms v. Green.

Summit C.P. CV-03-12-7220. Reported at 102 Ohio St.3d 295, 809 N.E.2d 1141, 2004-Ohio-2951. On motion for reconsideration and motion to withdraw as counsel. Motions denied.

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

2004-0420. State ex rel. Howard v. Doneghy.

Lucas App. No. L-03-1344, 2004-Ohio-684. Reported at 102 Ohio St.3d 355, 810 N.E.2d 958, 2004-Ohio-3207. On motion for reconsideration and/or motion for pro tunc entry. Motion denied.

2004-0596. Jones v. J&L Specialty Steel, Inc.

Stark App. No. 2003CA00245, 2004-Ohio-985. Reported at 102 Ohio St.3d 1532, 811 N.E.2d 1151, 2004-Ohio-3580. On motion for reconsideration. Motion denied.

Resnick and Pfeifer, JJ., dissent.

2004-0609. Vos v. Washingtonville.

Columbiana App. No. 03CO20, 2004-Ohio-1388. Reported at 102 Ohio St.3d 1532, 811 N.E.2d 1151, 2004-Ohio-3580. On motion for reconsideration. Motion denied.

2004-0636. State ex rel. Fish v. Clerk of the Ohio Supreme Court.

In Mandamus. Reported at 102 Ohio St.3d 1480, 810 N.E.2d 965, 2004-Ohio-3069. On motion for reconsideration. Motion denied.

2004-0776. State ex rel. Oates v. Portage Cty. Bd. of Elections.

In Prohibition. Reported at 102 Ohio St.3d 1480, 810 N.E.2d 965, 2004-Ohio-3069. On motion for reconsideration. Motion denied.

2004-0814. Stewart v. Tambi.

In Habeas Corpus. Reported at 102 Ohio St.3d 1480, 810 N.E.2d 965, 2004-Ohio-3069. On motion for reconsideration. Motion denied.

MISCELLANEOUS DISMISSALS

2004-0942. In re Complaint of Ohiotelnet.com, Inc. v. ALLTEL-Ohio, Inc.

Public Utilities Commission, No. 01-1530-TP-CSS. On notice of appeal. There having been no transcript of the proceedings nor complaint for a writ of mandamus filed in this court, pursuant to S.Ct.Prac.R. V(4),

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