

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 13, 2004

MERIT DECISIONS WITH OPINIONS

2002-1880. Danziger v. Luse, 2004-Ohio-5227.

Sandusky App. No. S-01-042, 2002-Ohio-4945. Judgment reversed.

Resnick, Pfeifer and Lundberg Stratton, JJ., concur.

O'Connor, J., concurs separately.

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

2003-2080. Cincinnati Bar Assn. v. Alsfelder, 2004-Ohio-5216.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 02-55. Robert F. Alsfelder, Attorney Registration No. 0014829, is suspended from the practice of law for one year, stayed on condition.

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

MERIT DECISIONS WITHOUT OPINIONS

2004-1253. Brown v. Reese.

In Prohibition. On motion to dismiss, motion to amend complaint, request for oral argument, motion for appointment of counsel, and motion for stay. Motion to dismiss sustained. All other motions denied as moot. Cause dismissed.

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

2004-1309. Turner v. JoElla.

On petition for declaratory judgment and 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.

2004-1334. State ex rel. Gegia v. Court of Appeals, Ninth Appellate Dist.

In Procedendo. 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.

2004-1380. Rush Transp. & Logistics v. Travis.

In Prohibition. On S.Ct.Prac.R. X(5) determination and consideration of respondents' answer and motions to intervene, for judicial notice, and to dismiss of Estate of Robert L. Beavers, Jr. Motion to intervene granted. Motion to dismiss sustained. Motion for judicial notice denied as moot. Cause dismissed.

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

2004-1381. Thorne v. Ohio Adult Parole Auth.

In Prohibition. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

2004-1415. State ex rel. Weaver v. Schweikert.

In Prohibition. On motion to dismiss. Cause dismissed.

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

2004-1416. Weaver v. Saunders.

In Habeas Corpus. On petition for writ of habeas corpus. 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

1999-1268. State v. Cassano.

Richland C.P. No. 98-CR-171H. On application for reopening under S.Ct.Prac.R. XI(6). Motion denied because the appellant failed to comply with the 90-day filing deadline in S.Ct.Prac.R. XI(6)(A).

2004-0099. State ex rel. Nestle USA-Prepared Foods Div., Inc. v. Indus. Comm.

In Mandamus. On motion for sanctions for frivolous action. Motion denied.
Resnick, J., not participating.

2004-1220. Shirley v. Republic-Franklin Ins. Co.

Stark App. No. 2003 CA 00361. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2004-1219, *Shirley v. Republic-Franklin Ins. Co.*, Stark App. No. 2003 CA 00361; causes held for the decision in 2003-2167, *Hopkins v. Dyer*, Tuscarawas App. No. 2003AP0100009, 2003-Ohio-6178; and briefing schedule stayed.

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

The conflict case is *Crestmont Cleveland Partnership v. Ohio Dept. of Health* (2000), 139 Ohio App.3d 928, 746 N.E.2d 222.

2004-1388. State v. Elliott.

Hamilton App. No. C-020736, 2003-Ohio-4962. On motion for leave to file delayed appeal. Motion denied.

2004-1389. State v. Anderson.

Hamilton App. No. C-040274. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2004-1428. State v. Gray.

Cuyahoga App. No. 83097, 2004-Ohio-1454 and 2004-Ohio-4481. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1449. State v. Sura.

Stark App. No. 2003 CA 00353. On motion for leave to file delayed appeal. Motion denied.

2004-1453. State v. Val Coy.

Stark App. No. 2004 CA 00156. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

2004-1455. State v. Schooler.

Montgomery App. No. 20143, 2004-Ohio-3569. On motion for leave to file delayed appeal. Motion denied.

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

2004-1457. State v. Stricker.

Franklin App. No. 03AP-746, 2004-Ohio-3557. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' Judgment Entry filed August 10, 2004:

"Is sexual battery under R.C. 2907.03(A)(1) a statutorily lesser included offense of rape under R.C. 2907.02(A)(2)?"

Pfeifer and O'Donnell, JJ., dissent.

The conflict case is *State v. Collins* (1977), 60 Ohio App.2d 116, 396 N.E.2d 221.

2004-1520. State v. Wade.

Franklin App. No. 03AP-774, 2004-Ohio-3974. On motion for stay of court of appeals' judgment. Motion granted.

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

2004-1530. State v. Riggins.

Hamilton App. No. C-030626, 2004-Ohio-4247. On motion for stay of court of appeals' judgment. Motion denied.

2004-1559. Fazio v. Hamilton Mut. Ins. Co.

Licking App. No. 03CA73, 2004-Ohio-2748. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issues stated at page 1 of the court of appeals' Judgment Entry filed September 7, 2004.

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

The conflict cases are *Caba v. State Farm Mut. Auto. Ins. Co.* (March 3, 1995), 6th Dist. No. L-94-168, *Tscherne v. Nationwide Mut. Ins. Co.* (November 20, 2003), 8th Dist. No. 81620, and *PrudentialProperty & Cas. Ins. Co. v. Gales* (August 7, 1986), 10th Dist. No. 86AP-250.

APPEALS ACCEPTED FOR REVIEW

2004-1049. State v. Haynie.

Marion App. No. 9-03-52, 2004-Ohio-2452. Discretionary appeal accepted on Proposition of Law No. 1; cause held for 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

O'Connor, J., would also accept on Proposition of Law No. 2 and hold for 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587.
Resnick and F.E. Sweeney, JJ., dissent.

2004-1101. Estate of Cowling v. Estate of Cowling.

Lorain App. Nos. 01CA007944 and 03CA008226, 2004-Ohio-2665.
F.E. Sweeney and O'Donnell, JJ., dissent.

2004-1103. Internatl. Assn. of Firefighters Local No. 136 v. Dayton.

Montgomery App. No. 20089, 2004-Ohio-2728. Discretionary appeal accepted on Proposition of Law No. 2.

Moyer, C.J., would also accept on Proposition of Law No. 1.
Pfeifer, Lundberg Stratton and O'Connor, JJ., dissent.

2004-1135. Bentley v. Pendleton.

Pike App. No. 03CA722, 2004-Ohio-3848. Discretionary appeal accepted; cause held for 2003-1081 and 2003-1092, *Gilchrist v. Gonsor*, Cuyahoga App. No. 80944, 2003-Ohio-2297; and briefing schedule stayed.
Resnick and F.E. Sweeney, JJ., dissent.

2004-1169. Jones v. Goodyear Tire & Rubber Co.

Summit App. No. 21724, 2004-Ohio-2821. Discretionary appeal accepted on Proposition of Law No. 1.
Resnick, Pfeifer and O'Donnell, JJ., dissent.

2004-1171. State v. Mathis.

Cuyahoga App. No. 83311, 2004-Ohio-2982.
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

2004-1219. Shirley v. Republic-Franklin Ins. Co.

Stark App. No. 2003 CA 00361. Discretionary appeal accepted on Proposition of Law Nos. 1 and 2; cause consolidated with 2004-1220, *Shirley v. Republic-Franklin Ins. Co.*, Stark App. No. 2003 CA 00361; causes held for the decision in 2003-2167, *Hopkins v. Dyer*, Tuscarawas App. No. 2003AP0100009, 2003-Ohio-6178; and briefing schedule stayed.

Moyer, C.J., Lundberg Stratton and O'Donnell, JJ., would also accept on Proposition of Law No. 3.
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2004-0647. State v. Rice.

Butler App. No. CA2003-01-015, 2004-Ohio-697.

2004-0740. State v. Songer.

Ashland App. No. 03-COA-051, 2004-Ohio-1281.

2004-0960. State v. Williams.

Summit App. No. 21840, 2004-Ohio-4316.

2004-1019. State v. Burt.

Stark App. No. CA9470.

2004-1025. Jarvis v. Consol. Rail Corp.

Cuyahoga App. No. 83244, 2004-Ohio-2011.

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

O'Connor, J., dissents and would accept on Proposition of Law No. 2.

2004-1032. State v. Ball.

Erie App. No. E-02-024, 2004-Ohio-2455, 2004-Ohio-2585 and 2004-Ohio-2586.

2004-1034. He v. Zing.

Licking App. No. 2003CA00056.

2004-1037. Penson v. Mezibov.

Hamilton App. No. C-030578.

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

2004-1038. Blust v. Lamar Advertising Co.

Montgomery App. No. 19942, 2004-Ohio-2433. Discretionary appeal and cross-appeal not accepted.

Resnick, J., dissents.

2004-1040. State v. Prather.

Cuyahoga App. No. 83227, 2004-Ohio-2395.

2004-1051. First Bank of Marietta v. Roslovic & Partners, Inc.

Franklin App. Nos. 03AP-332 and 03AP-333, 2004-Ohio-2717.

2004-1052. State v. Hamilton.

Franklin App. No. 03AP-852, 2004-Ohio-2573 and 2004-Ohio-3556.

2004-1053. State v. Ballou.

Cuyahoga App. No. 83160, 2004-Ohio-2339.

2004-1056. Waheed v. Anand.

Allen App. No. 1-03-59.

Lundberg Stratton, J., dissents.

2004-1057. McCabe v. Janis.

Franklin App. No. 03AP-620, 2004-Ohio-2531.

Pfeifer, J., dissents.

2004-1068. State v. Jamison.

Medina App. No. 03CA0107-M, 2004-Ohio-2514.

2004-1069. Tonti v. Tonti.

Franklin App. No. 03AP-494, 2004-Ohio-2529.

2004-1070. Wilkins v. Wilkinson.

Franklin App. No. 03AP-502, 2004-Ohio-2530.

O'Connor and O'Donnell, JJ., dissent and would accept on Proposition of Law Nos. 1 and 2.

2004-1071. State v. Stedman.

Cuyahoga App. No. 83531, 2004-Ohio-3298.

O'Donnell, J., not participating.

2004-1072. Jennings v. Jennings.

Licking App. No. 2003-CA-00067, 2004-Ohio-2537.

Moyer, C.J., dissents.

O'Connor, J., dissents and would accept on Proposition of Law No. 2.

2004-1075. Downey v. Corrigan.

Summit App. No. 21785, 2004-Ohio-2510.

2004-1076. State v. Rondini.

Ashtabula App. No. 2002-A-0053, 2004-Ohio-2597.

2004-1077. Ritter v. Fairway Park Properties, L.L.C.

Summit App. No. 21509, 2004-Ohio-2518.

2004-1079. State v. Dixon.

Hamilton App. No. C-030227, 2004-Ohio-2575.

2004-1080. State v. White.

Cuyahoga App. No. 78190.

O'Donnell, J., not participating.

2004-1081. In re LaPoint Discount Auto Parts.

Lucas App. No. L-03-1186, 2004-Ohio-2583.

2004-1084. State v. Dunn.

Washington App. No. 03CA47, 2004-Ohio-2883.

2004-1085. Garrett v. Sandusky.

Erie App. No. E-03-024, 2004-Ohio-2582.

Pfeifer, J., dissents.

2004-1087. Neal v. Farmers Ins. of Columbus, Inc.

Franklin App. No. 03AP-1078, 2004-Ohio-2574.

2004-1088. State v. Arrowood.

Ross App. No. 03CA2706.

2004-1091. Patterson v. Colla.

Mahoning App. No. 03 MA 18, 2004-Ohio-3033.

2004-1092. Munday v. S. Ohio Coal Co.

Meigs App. No. 03CA12, 2004-Ohio-2872.

2004-1095. Bank One, N.A. v. SKRL Tool & Die, Inc.

Lake App. No. 2003-L-048, 2004-Ohio-2602.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., dissent.

2004-1096. State v. Dixon.

Cuyahoga App. No. 82951, 2004-Ohio-2406.

2004-1098. Slowbe v. Slowbe.

Cuyahoga App. No. 83079, 2004-Ohio-2411.

O'Donnell, J., not participating.

2004-1099. Bank One, N.A. v. Barclay.

Franklin App. No. 03AP-870, 2004-Ohio-2718.

2004-1100. Akers v. Akers.

Butler App. No. CA2003-07-176, 2004-Ohio-2908.

Resnick and Lundberg Stratton, JJ., dissent.

2004-1105. State v. Thompson.

Franklin App. No. 03AP-841, 2004-Ohio-3229.

Resnick and Lundberg Stratton, JJ., dissent.

2004-1106. State v. Steward.

Richland App. No. 03-CA-69, 2004-Ohio-3054.

2004-1107. State v. Shoop.

Hancock App. No. 5-04-24.

2004-1108. State v. Myers.

Richland App. No. 03-CA-61, 2004-Ohio-3052.

F.E. Sweeney, J., dissents.

2004-1109. State v. Short.

Cuyahoga App. No. 83492, 2004-Ohio-2695.

2004-1117. State v. Brewster.

Hamilton App. No. C-030043, 2004-Ohio-2722.

2004-1120. Fazio v. Hamilton Mut. Ins. Co.

Licking App. No. 03CA73, 2004-Ohio-2748.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., dissent.

2004-1121. State v. Graham.

Hancock App. No. 5-04-02.

2004-1123. State v. Hicks.

Wood App. No. WD-02-44, 2004-Ohio-2780.

2004-1126. Lykins v. Miami Valley Hosp.

Montgomery App. No. 19784, 2004-Ohio-2732.
F.E. Sweeney and Pfeifer, JJ., dissent.

2004-1127. Gaskins v. Young.
Montgomery App. No. 20148, 2004-Ohio-2731.

2004-1129. Duncan v. Stephens.
Cuyahoga App. No. 83238, 2004-Ohio-2402.

2004-1136. State v. Jackson.
Ashtabula App. No. 2003-A-0005, 2004-Ohio-2920.
Pfeifer, J., dissents.

2004-1137. State v. Nguyen.
Lucas App. No. L-03-1152, 2004-Ohio-2879.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

2004-1145. Jaylin Investments, Inc. v. Moreland Hills.
Cuyahoga App. No. 82739, 2004-Ohio-2689.
Moyer, C.J., and O'Donnell, J., dissent.

2004-1152. Richmond Hts. v. Mitchell.
Cuyahoga App. No. 83495, 2004-Ohio-2552.
O'Donnell, J., dissents.

2004-1154. State v. Shafer.
Cuyahoga App. No. 83290, 2004-Ohio-2555.

2004-1158. Linn v. Roto-Rooter, Inc.
Cuyahoga App. No. 82657, 2004-Ohio-2559.
Moyer, C.J., dissents and would hold for 2003-1538, *Howland v. Purdue Pharma, L.P.*, Butler App. Nos. CA2002-09-220, CA2002-09-223 and CA2002-09-227, 2003-Ohio-3699.

2004-1165. State v. Garrett.
Franklin App. Nos. 04AP-391, 04AP-392 and 04AP-393.

2004-1166. State v. Tucker.
Stark App. No. 2003CA00397, 2004-Ohio-3060.

2004-1168. State v. Wright.

Mahoning App. No. 01 CA 202, 2004-Ohio-2931.

2004-1174. Baddour v. Fox.

Licking App. No. 03CA77, 2004-Ohio-3059.

2004-1181. Brown v. Morganstern.

Trumbull App. No. 2002-T-0164, 2004-Ohio-2930.

2004-1191. State v. Coburn.

Adams App. No. 03CA774, 2004-Ohio-2997.

2004-1194. State v. Conrad.

Stark App. No. CA9051.

2004-1197. State v. Pasqua.

Hamilton App. No. C-030133, 2004-Ohio-2992.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., dissent.

2004-1202. State v. Tate.

Cuyahoga App. No. 83582, 2004-Ohio-2979.

2004-1206. State v. Williams.

Cuyahoga App. No. 83479, 2004-Ohio-2857.

2004-1208. State v. Gardner.

Cuyahoga App. No. 84453.

2004-1213. State v. Brown.

Franklin App. No. 03AP-130, 2004-Ohio-2990.

2004-1244. State v. Gibson.

Cuyahoga App. No. 83069, 2004-Ohio-3112.

2004-1260. Hawk v. Am. Elec. Power Co.

Allen App. No. 1-04-01, 2004-Ohio-3549.

2004-1292. State v. Bell.

Hamilton App. No. C-030726, 2004-Ohio-3621.

2004-1367. State v. Marbury.

Montgomery App. No. 19226, 2003-Ohio-3242 and 2004-Ohio-1817.

2004-1426. In re Ross.

Geauga App. No. 2003-G-2550, 2004-Ohio-3680.

Pfeifer, J., dissents.

RECONSIDERATION OF PRIOR DECISIONS

2004-0496. Dayton Bar Assn. v. Gerren.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-012. Reported at 103 Ohio St.3d 21, 2004-Ohio-4110, 812 N.E.2d 1280. On motion for reconsideration. Motion denied.

2004-0809. Disciplinary Counsel v. O'Neill.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 02-34. Reported at 103 Ohio St.3d ___, 2004-Ohio-4704. On motion for reconsideration and motion for stay of execution of judgment. Motions denied.

Resnick and Pfeifer, JJ., dissent and would reduce the costs taxed to respondent to \$5,000.

Ralph Winkler, J., of the First Appellate District, sitting for Lundberg Stratton, J.