

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

June 7, 2006

[Cite as *06/07/2006 Case Announcements*, 2006-Ohio-2762.]

MERIT DECISIONS WITH OPINIONS

In re Ohio Criminal Sentencing Statutes Cases, 2006-Ohio-2721.

Dispositions of currently pending appeals based on the decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. See entry.

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

2004-2078. Butler Cty. Bar Assn. v. Cornett, 2006-Ohio-2575.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 02-96. Candie Lynn Cornett, Attorney Registration No. 0059489, is permanently disbarred from the practice of law in Ohio.

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

2005-0044. Knox Cty. Bd. of Commrs. v. Knox Cty. Engineer, 2006-Ohio-2576.

Knox App. No. 04-CA-000010, 2004-Ohio-6680. Judgment reversed.

Moyer, C.J., Resnick, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Pfeifer and Lundberg Stratton, JJ., concur in part and dissent in part.

2005-1399. Anderson v. Nationwide Mut. Fire Ins. Co., 2006-Ohio-2578.

Lucas App. No. L-04-1251, 2005-Ohio-3043. Sua sponte, cause dismissed as having been improvidently accepted.

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

Matthew W. McFarland, J., of the Fourth Appellate District, sitting for Lanzinger, J.

2006-0094. Cleveland Bar Assn. v. Helfgott, 2006-Ohio-2579.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-065. Steven Isaac Helfgott, Attorney Registration No. 0022884, is permanently disbarred from the practice of law in Ohio.

Moyer, C.J., Pfeifer, O'Connor and O'Donnell, JJ., concur.

Resnick, Lundberg Stratton and Lanzinger, JJ., dissent.

2006-0102. State v. Stevens, 2006-Ohio-2580.

Cuyahoga App. No. 86101, 2005-Ohio-6384. Discretionary appeal accepted and judgment reversed and cause remanded.

Moyer, C.J., Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Resnick and Pfeifer, JJ., dissent.

MERIT DECISIONS WITHOUT OPINIONS

2006-0710. McDaniel v. Lynch.

In Prohibition. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

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

2006-0770. Weatherspoon v. Eberlin.

In Habeas Corpus. On petition for writ of habeas corpus of Seth A. Weatherspoon. Sua sponte, cause dismissed.

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

2006-0772. Harris v. Jeffreys.

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

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

2006-0775. Kinsey v. Karnes.

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

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

2006-0807. Carter v. Ohio Adult Parole Auth.

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

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

2006-0845. State ex rel. Dunning v. Kimbler.

In Prohibition. On motion to dismiss and motion for sanctions. Motion to dismiss granted.

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

Motion for sanctions granted. Respondent shall file a bill and documentation in support of an award for attorney fees, in accordance with the guidelines set forth in DR 2-106, within 20 days. The bill and documentation should detail the expenses and approximate amount of compensation and fringe benefits, if any, that have been or will be paid to counsel in connection with defending respondent in this frivolous prohibition action. Relator may file objections to respondent's bill and documentation within 10 days of the filing of the bill and documentation, and respondent may file a reply to relator's objections, if any, within 5 days of the filing of the objections.

O'Donnell and Lanzinger, JJ., would deny the motion for sanctions.

MOTION AND PROCEDURAL RULINGS

2002-2130. State v. McKnight.

Vinton C.P. No. 01-CR-7230. On application for reopening under S.Ct.Prac.R. XI(6). Application denied.

2004-0485. State v. Ketterer.

Butler C.P. No. CR-2003-03-0309. On motion for leave to file supplemental briefing to address sentencing issues. Motion denied.

Pfeifer, J., dissents.

2005-1992. State ex rel. Cafaro Mgt. Co. v. Mabe.

In Mandamus. On complaint and answer of respondent. Alternative writ granted, and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days; relator shall file its brief within 10 days of the filing of the evidence; respondent

shall file his brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 7 days after the filing of respondent's brief..

2005-2134. Preferred Capital, Inc. v. Power Eng. Group, Inc.

Summit App. Nos. 22475, 22476, 22477, 22478, 22485, 22486, 22487, 22488, 22489, 22497, 22499, 22506 and 22513, 163 Ohio App.3d 522, 2005-Ohio-5113. On motion to strike Proposition of Law Nos. II and III of appellants' merit brief. Motion denied.

O'Connor, O'Donnell and Lanzinger, JJ., dissent.

2006-0216. State v. Tooley.

Portage App. No. 2004-P-0064, 2005-Ohio-6709. On motion requesting that Dean Boland withdraw voluntarily or be disqualified from further representation in the case. Motion denied.

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

2006-0646. Ohio Consumers' Counsel v. Pub. Util. Comm.

Public Utilities Commission, No. 05-792-EL-ATA. On motion for stay of execution of the enforcement of the Public Utilities Commission's opinion and order dated March 1, 2006 and a Commission entry on rehearing dated March 29, 2006. Motion denied.

2006-0742. State ex rel. Triplett v. Ross.

In Prohibition. On motion to dismiss, motion of Ohio Attorney General for leave to intervene as respondent, and answer of intervening respondent. Motion to intervene granted. Alternative writ granted, and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days; relator shall file his brief within 10 days of the filing of the evidence; respondents shall file their brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 7 days after the filing of respondents' brief..

Moyer, C.J., Resnick and O'Connor, JJ., would grant the motion to intervene and the motion to dismiss.

2006-0767. Floss v. Culver.

Ashtabula App. No. 2004-A-0014, 2006-Ohio-197. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2005-2399 and 2006-0249, *Mid-Am. Fire & Cas. Co. v. Heasley*, Lake App. No. 2004-L-115, 2005-Ohio-6072; cause consolidated with 2006-0505,

Floss v. Culver, Ashtabula App. No. 2004-A-0014, 2006-Ohio-197; and briefing schedule stayed.

Pfeifer, J., dissents.

2006-0798. In re S.J.K.

Summit App. No. 22721, 2006-Ohio-653. 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 April 3, 2006:

"Whether an assessment of points against a traffic offender's record qualifies as a 'collateral disability' or a 'loss of civil rights stemming from [the] conviction' sufficient to demonstrate that the traffic offender continues to have a 'substantial stake in the judgment of conviction' even after paying the fines and costs also levied in the judgment of conviction."

Resnick and Pfeifer, JJ., dissent.

O'Connor, J., not participating.

The conflict cases are *State v. Ingalls*, Stark App. No. 2003CA00311, 2004-Ohio-3441; *Cleveland v. Jennings* (Feb. 17, 2000), Cuyahoga App. No. 76810; *Westlake v. Connoles* (Sept. 2, 1999), Cuyahoga App. Nos. 74727 and 74910; *State v. Brown* (Sept. 26, 1991), Mahoning App. No. 90 CA 107; and *State v. Simmons* (Dec. 26, 1989), Pickaway App. No. 88CA8.

Sua sponte, cause consolidated with 2006-0673, *In re S.J.K.*, Summit App. No. 22721, 2006-Ohio-653.

2006-0804. State v. Franklin.

Greene App. No. 2004 CA 127, 2005-Ohio-6832. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-0822. State v. Powell.

Montgomery App. No. 20857, 2006-Ohio-263. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-0824. Bellville v. Kieffaber.

Richland App. No. 2005CA0061, 2005-Ohio-6879. 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 29, 2006:

"In a traffic law enforcement citation for 'excessive speed,' does the complaint fail, as a matter of law, to charge a necessary element of the offense if it

does not also allege that the speed is ‘prima-facie’ unlawful and the speed alleged is **not** charged as a ‘per se’ violation of the applicable traffic code?”

Resnick, Pfeifer and O’Donnell, JJ., dissent.

The conflict case is *State v. Oglesby* (Sept. 1, 2000), Erie App. Nos. E-99-077 and E-99-076.

2006-0829. Ohio Partners for Affordable Energy v. Pub. Util. Comm.

Public Utilities Commission, No. 05-792-EL-ATA. On motion for admission pro hac vice of David C. Rinebolt by Colleen L. Mooney on behalf of Ohio Partners for Affordable Energy. Motion granted.

2006-0833. State v. Mitchell.

Guernsey App. No. 05-CA-2, 2006-Ohio-64. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-0857. Shaheen v. Snyder.

Tuscarawas App. No. 2005AP090070, 2006-Ohio-1492. On motion for stay of court of appeals’ judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2006-0295. State v. White.

Summit App. No. 22591, 2005-Ohio-6990.

O’Connor, J., not participating.

2006-0489. Reagans v. Mountainhigh Coach Works, Inc.

Miami App. No. 05CA12, 2006-Ohio-423.

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

2006-0505. Floss v. Culver.

Ashtabula App. No. 2004-A-0014, 2006-Ohio-197. Discretionary appeal accepted; cause consolidated with 2006-0767, *Floss v. Culver*, Ashtabula App. No. 2004-A-0014, 2006-Ohio-197; cause held for the decision in 2005-2399 and 2006-0249, *Mid-Am. Fire & Cas. Co. v. Heasley*, Lake App. No. 2004-L-115, 2005-Ohio-6072; and briefing schedule stayed.

Pfeifer, J., dissents.

2006-0506. Preferred Capital, Inc. v. Al & Lou Builders Supply, Inc.

Summit App. No. 22654, 2006-Ohio-250. Discretionary appeal accepted on Proposition of Law Nos. I and II; cause held for the decision in 2005-2134, *Preferred Capital, Inc. v. Power Eng. Group, Inc.*, Summit App. Nos. 22475, 22476, 22477, 22478, 22485, 22486, 22487, 22488, 22489, 22497, 22499, 22506 and 22513, 163 Ohio App.3d 522, 2005-Ohio-5113; and briefing schedule stayed.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law No. III.

O'Connor, J., would accept the appeal on Proposition of Law No. I only.

2006-0507. Peters v. Columbus Steel Castings Co.

Franklin App. No. 05AP-308, 2006-Ohio-382.

Pfeifer and O'Donnell, JJ., dissent.

2006-0539. Herbert v. Porter.

Seneca App. No. 13-05-15, 165 Ohio App.3d 217, 2006-Ohio-355.

O'Connor, O'Donnell and Lanzinger, JJ., would accept the appeal on Proposition of Law No. II only.

2006-0655. Gustin v. Chaney.

Highland App. No. 05CA7, 2006-Ohio-1049. Discretionary appeal accepted; cause held for the decision in 2005-0998, *Robinson v. Bates*, Hamilton App. No. C-040063, 160 Ohio App.3d 668, 2005-Ohio-1879; and briefing schedule stayed.

Pfeifer, J., dissents.

2006-0673. In re S.J.K.

Summit App. No. 22721, 2006-Ohio-653. Discretionary appeal accepted and cause consolidated with 2006-0798, *In re S.J.K.*, Summit App. No. 22721, 2006-Ohio-653.

Resnick and Lanzinger, JJ., dissent.

O'Connor, J., not participating.

APPEALS NOT ACCEPTED FOR REVIEW

2006-0125. State v. Seay.

Hamilton App. No. C-040763, 2005-Ohio-5964.

2006-0213. State v. Brown.

Clark App. No. 2004-CA-64, 2006-Ohio-42.

2006-0218. Bellville v. Kieffaber.

Richland App. No. 2005CA0061, 2005-Ohio-6879.

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

2006-0221. State v. Rezos.

Butler App. No. CA2005-11-483.

2006-0369. State v. Middlesworth.

Wayne App. No. 05CA0016, 2006-Ohio-12.

2006-0374. Brown v. Wright.

Montgomery App. No. 20560, 2006-Ohio-38.

Resnick, J., dissents.

2006-0397. State v. Gonzales.

Defiance App. No. 4-06-02.

2006-0413. State v. Roble.

Lucas App. No. L-04-1374, 2006-Ohio-328.

Resnick and Lundberg Stratton, JJ., dissent.

Lanzinger, J., not participating.

2006-0414. State v. Larkins.

Cuyahoga App. No. 85877, 2006-Ohio-90.

Resnick and Lundberg Stratton, JJ., dissent.

2006-0420. Curtis v. Ohio Adult Parole Auth.

Franklin App. No. 04AP-1214, 2005-Ohio-4781 and 2006-Ohio-15.

Pfeifer, J., would accept the appeal and reverse and remand on the authority of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

2006-0425. State v. Ealy.

Montgomery App. No. 20994, 2006-Ohio-414.

2006-0426. State v. Steele.

Hamilton App. No. C-060068.

2006-0434. Rich v. McDonald's Corp.

Cuyahoga App. No. 87444. Discretionary appeal not accepted.

Pfeifer and O'Donnell, JJ., dissent.

On motion for admission pro hac vice of Nikki J. Palmer and Brett Rawitz by Steven T. Catlett on behalf of McDonald's Corporation. Motion granted.

2006-0438. Davis v. Nationwide Mut. Fire Ins. Co.

Montgomery App. No. 20854, 2006-Ohio-306.

Pfeifer, J., dissents.

2006-0446. Jones v. Sandusky City Schools.

Erie App. No. E-05-041, 2006-Ohio-188.

2006-0449. Roberts v. Frazier.

Montgomery App. No. 20989, 2006-Ohio-312.

2006-0450. State v. Steele.

Hamilton App. No. C-060094.

2006-0451. State v. Blakely.

Lucas App. No. L-03-1275, 2006-Ohio-185.

2006-0459. State v. Kittrell.

Cuyahoga App. No. 85997, 2006-Ohio-94.

O'Connor and O'Donnell, JJ., dissent.

2006-0460. Beachwood v. Heimberger.

Cuyahoga App. No. 87524.

Resnick, J., dissents.

2006-0467. State v. Rose.

Guernsey App. No. 04CA40, 2006-Ohio-397.

2006-0470. State v. Rogers.

Hamilton App. No. C-060002.

2006-0471. State v. Russell.

Franklin App. No. 05AP-391, 2006-Ohio-383. Discretionary appeal not accepted. Petition to vacate or set aside sentence, motion for expert assistance, and motion to strike memorandum in response denied.

2006-0474. State v. Wells.

Cuyahoga App. No. 85586, 2006-Ohio-87.

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

2006-0476. Hutchins v. FedEx Ground Package Sys., Inc.

Summit App. No. 22852, 2006-Ohio-253.

2006-0482. State v. Richardson.

Pickaway App. No. 05CA29, 2006-Ohio-386.

2006-0483. Anderson v. Sherwood Food Distrib.

Cuyahoga App. No. 86164, 2006-Ohio-101.

Resnick, J., dissents.

2006-0487. State v. Baker.

Cuyahoga App. No. 86013, 2006-Ohio-95.

Lanzinger, J., dissents.

2006-0490. State v. Hunt.

Gallia App. No. 05CA17.

O'Donnell, J., dissents.

2006-0493. Cleveland Hts. v. Reid.

Cuyahoga App. No. 85594, 2006-Ohio-170.

2006-0496. State v. James.

Stark App. No. 2005-CA-00076, 2006-Ohio-271.

2006-0500. State v. Brooks.

Cuyahoga App. No. 87532.

2006-0501. State v. McCullough.

Trumbull App. No. 2005-T-0096, 2006-Ohio-489.

2006-0504. State v. Duncan.

Cuyahoga App. No. 84587, 2005-Ohio-6241.

Pfeifer and Lundberg Stratton, JJ., dissent.

2006-0512. Great Am. Ins. Co. v. Patricia Smith Thompson Trust.

Hamilton App. No. C-040127, 2006-Ohio-304.

Pfeifer, J., dissents.

O'Connor, J., dissents and would accept the appeal on Proposition of Law No. I.

2006-0513. Kasapis v. High Point Furniture Co., Inc.

Summit App. Nos. 22758 and 22762, 2006-Ohio-255.

Resnick, J., dissents.

2006-0516. Kaip v. Estate of Smith.

Erie App. No. E-05-037, 2006-Ohio-323.

2006-0520. State v. Savage.

Geauga App. No. 2005-G-2668, 2006-Ohio-487.

2006-0522. State v. Streeter.

Wood App. No. WD-03-088, 162 Ohio App.3d 748, 2005-Ohio-4000.

2006-0527. State v. Jaffal.

Cuyahoga App. No. 87579.

2006-0542. State v. Whaley.

Trumbull App. No. 2005-T-0118, 2006-Ohio-490.

2006-0546. State v. Brown.

Franklin App. No. 05AP-375, 2006-Ohio-385.

2006-0555. State v. Mathews.

Richland App. No. 04CA80.

2006-0557. State v. Magers.

Seneca App. No. 13-03-48, 2004-Ohio-4013.

2006-0560. Bilow v. Wayne Mut. Ins. Co.

Henry App. No. 7-05-10, 2006-Ohio-737.

Pfeifer, J., dissents.

2006-0565. Keisler v. FirstEnergy Corp.

Ottawa App. No. OT-04-055, 2006-Ohio-476. Discretionary appeal not accepted. Motion to strike Exhibit B attached to appellant's memorandum in support of jurisdiction denied as moot.

Pfeifer, J., dissents.

2006-0566. State v. Harding.

Montgomery App. No. 20801, 2006-Ohio-481.

Pfeifer, J., dissents.

2006-0571. Saferin v. Sky Bank Mid Am Region.

Lucas App. No. L-05-1091, 2006-Ohio-466.

Pfeifer, J., dissents.

Resnick, J., not participating.

2006-0579. State v. Wilson.

Franklin App. No. 05AP-277, 2006-Ohio-643.

2006-0583. State v. Price.

Cuyahoga App. No. 87504.

2006-0594. McKinley v. Indus. Comm.

Franklin App. No. 05AP-1283.

2006-0602. State v. Jones.

Cuyahoga App. No. 86261, 2006-Ohio-299.

2006-0618. State v. Bates.

Montgomery App. No. 21442.

2006-0623. State v. Lambert.

Ross App. No. 95CA2104.

2006-0626. Cleveland Hts. v. Jones.

Cuyahoga App. No. 86313, 2006-Ohio-454.

2006-0629. State v. Meredith.

Warren App. No. CA2004-06-062, 2005-Ohio-2664.

2006-0643. State v. White.

Warren App. No. CA2006-02-013.

2006-0647. State v. Theve.

Clermont App. No. CA2005-05-039, 2006-Ohio-599.

2006-0663. In re L.W.

Franklin App. No. 05AP-317, 2006-Ohio-644. Discretionary appeal not accepted. Motion to remove guardian ad litem as a party dismissed as moot.

2006-0665. Citifinancial, Inc. v. Lynch.

Lorain App. No. 06CA008862.

2006-0674. State v. King.

Clermont App. No. CA2005-07-064, 2006-Ohio-747.

2006-0718. State v. Crotts.

Cuyahoga App. No. 81477, 2003-Ohio-2473, 2005-Ohio-3435, and 2006-Ohio-1099.

RECONSIDERATION OF PRIOR DECISIONS

2003-1904. State v. Ferguson.

Montgomery C.P. No. 2002-CR-00353. Reported at 108 Ohio St.3d 451, 2006-Ohio-1502, 844 N.E.2d 806. On motion for reconsideration. Motion denied.

IT IS FURTHER ORDERED that the date previously set by this court for the execution of sentence in this case is hereby modified. Said sentence shall be carried into execution on Tuesday, August 8, 2006.

2005-2443. Ullmann v. Duffus.

Franklin App. No. 05AP-299, 2005-Ohio-6060. Reported at 109 Ohio St.3d 1406, 2006-Ohio-1703, 845 N.E.2d 523. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

2006-0002. Samman v. Nukta.

Cuyahoga App. No. 85739, 2005-Ohio-5444. Reported at 109 Ohio St.3d 1406, 2006-Ohio-1703, 845 N.E.2d 523. On motion for reconsideration. Motion denied.

2006-0039. Burns v. Ohio Dept. of Job & Family Servs.

Trumbull App. Nos. 2004-T-0071 and 2004-T-0072, 2005-Ohio-6290. Reported at 109 Ohio St.3d 1407, 2006-Ohio-1703, 845 N.E.2d 523. On motion for reconsideration. Motion for reconsideration granted to the following extent:

The discretionary appeal is accepted; the cause is held for the decision in 2006-0405, *Geretz v. Ohio Dept. of Job & Family Servs.*, Erie App. No. E-05-042, 2006-Ohio-321; and briefing schedule is stayed.