

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

June 21, 2006

[Cite as *06/21/2006 Case Announcements, 2006-Ohio-2998.*]

MERIT DECISIONS WITH OPINIONS

2003-1964. State v. Conway, 2006-Ohio-2815.

Franklin C.P. No. 02CR-3117. Judgment affirmed.

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

2005-2054. Cuyahoga Cty. Bar Assn. v. Marosan, 2006-Ohio-2816.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 05-035. Joseph E. Marosan, Attorney Registration No. 0025849, is suspended from the practice of law in Ohio for six months, such suspension to run consecutively to respondent's present suspension.

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

Pfeifer and O'Donnell, JJ., dissent and would impose a six-month suspension to run concurrently with respondent's present suspension.

2005-2394. Toledo Bar Assn. v. Burkholder, 2006-Ohio-2817.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 05-038. Fred Joseph Burkholder, Attorney Registration No. 0014094, is suspended from the practice of law in Ohio for six months, stayed on condition.

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

Pfeifer, J., dissents and would publicly reprimand respondent.

2006-0096. Columbus Bar Assn. v. Stubbs, 2006-Ohio-2818.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 04-083. SaKeya MonCheree Stubbs, Attorney Registration No. 0071309, is

suspended from the practice of law in Ohio for six months, stayed on conditions, and placed on probation for one year.

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

MERIT DECISIONS WITHOUT OPINIONS

2006-0726. State ex rel. Barton v. Collins.

In Mandamus. On answer of respondent. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

2006-0761. State ex rel. Anderson v. Common Pleas Court of Lake County.

In Mandamus. 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.

2006-0795. State ex rel. Grundstein v. Greene.

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

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

Lundberg Stratton, J., would grant an alternative writ.

2006-0937. Elsass v. Jeffreys.

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

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

2006-0938. Taogaga v. Jeffreys.

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

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

MOTION AND PROCEDURAL RULINGS

2005-1802. Morrow Cty. Airport Auth. v. Whetstone Flyers, Ltd.

Morrow App. No. 04 CA 6, 162 Ohio App.3d 624, 2005-Ohio-4314. On motion to participate in oral argument. Motion denied. On motion for relief from S.Ct.Prac.R. VI(7). Motion granted.

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 for admission pro hac vice of Jill M. Wheaton and Edward A. Groobert by Tamara A. O'Brien. Motion granted.

2006-0714. State ex rel. Morgan v. New Lexington.

In Mandamus. On answer of respondent. Alternative writ is 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 of the date of this entry; relator shall file her brief within 10 days of the filing of the evidence; respondent shall file its 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.

2006-0842. State v. Jarrett.

Auglaize App. No. 2-05-37, 2006-Ohio-882. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2006-0294 and 2006-0298, *State v. Crager*, Marion App. No. 9-04-54, 2005-Ohio-6868; and briefing schedule stayed.

O'Donnell, J., would hold the cause for the decision in 2005-0773, *State v. Stahl*, Summit App. No. 22261, 2005-Ohio-1137.

2006-0847. State v. Curran.

Clark App. No. 2005 CA 22, 2006-Ohio-773. On motion for leave to file delayed appeal. Motion granted.

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

2006-0850. State v. Crawford.

Hamilton App. No. C-050161. On motion for leave to file delayed appeal. Motion denied.

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

2006-0862. State ex rel. Richard v. Anderson.

Lorain App. No. 06CA008887. On motion for emergency relief and immediate consideration and second motion for emergency relief and immediate consideration. Motions denied.

2006-0866. State v. Parks.

Montgomery App. No. 20905, 2005-Ohio-6395. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-0869. State v. Powell.

Clermont App. No. CA2005-11-102. On motion for leave to file delayed appeal. Motion denied.

2006-0876. State v. Legg.

Hamilton App. No. C-050994. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-0880. State v. Beeler.

Summit App. No. 22884. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-0890. State v. Carr.

Clermont App. No. CA2004-01-006, 2005-Ohio-417. On motion for leave to file delayed appeal. Motion denied.

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

2006-0925. State v. Edwards.

Hamilton App. No. C-040281. On motion for leave to file delayed appeal. Motion denied.

2006-0972. State v. Dovala.

Lorain App. No. 05CA008767. On motion for stay of judgment. Motion denied.

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

2006-0978. Rowe v. Brunzman.

Ross App. No. 06CA2891, 2006-Ohio-1964. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2006-0502. State v. Moore.

Cuyahoga App. No. 85828, 2006-Ohio-277. Discretionary cross-appeal accepted on Proposition of Law Nos. II and III; cause held for the decision in 2006-0294 and 2006-0298, *State v. Crager*, Marion App. No. 9-04-54, 2005-Ohio-6868; and briefing schedule stayed.

2006-0567. Summit Cty. Children Servs. Bd. v. Communication Workers of Am., Local No. 4546.

Summit App. No. 22697, 2006-Ohio-389.

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

2006-0616. Webb v. McCarty.

Franklin App. No. 05AP-698, 2006-Ohio-795. Discretionary appeal accepted on Proposition of Law No. II.

Lundberg Stratton, J., would also accept the appeal on all other Propositions of Law.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

2006-0676. In re Walker.

Ashtabula App. No. 2005-A-0067, 2006-Ohio-739. Discretionary appeal accepted on Proposition of Law No. II.

Lundberg Stratton and O'Donnell, JJ., would also accept the appeal on all other Propositions of Law.

Resnick and Pfeifer, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2006-0321. State v. Burke.

Franklin App. No. 04AP-1234, 2005-Ohio-7020 and 2006-Ohio-1026. Discretionary appeal and discretionary cross-appeal not accepted.

O'Donnell, J., dissents and would accept the cross-appeal.

2006-0408. Kahn v. CVS Pharmacy, Inc.

Hamilton App. No. C-040669, 165 Ohio App.3d 420, 2006-Ohio-112. Discretionary appeal and discretionary cross-appeal not accepted.

Lundberg Stratton and O'Donnell, JJ., dissent and would accept the appeal on Proposition of Law No. I.

2006-0494. State v. Scott.

Stark App. No. 2005CA00028, 2006-Ohio-257.

2006-0508. Neinast v. Bd. of Trustees of Columbus Metro. Library.

Franklin App. No. 05AP-668, 165 Ohio App.3d 211, 2006-Ohio-287.

2006-0510. State v. Washington.

Hamilton App. No. C-060005.

2006-0518. Omans v. Norfolk S. Ry.

Lucas App. No. L-05-1047, 165 Ohio App.3d 146, 2006-Ohio-325.

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

Lanzinger, J., dissents.

2006-0523. State v. Ossman.

Licking App. No. 03 CA 92, 2006-Ohio-720.

2006-0524. State v. Ricica.

Fulton App. No. F-05-009, 2006-Ohio-327.

2006-0537. In re Whaley.

Trumbull App. No. 2005-T-0137, 2006-Ohio-491.

2006-0544. Chumney v. Scott.

Tuscarawas App. No. 2005 AP 06 0036, 2006-Ohio-439.

2006-0547. Dray v. Gen. Motors Corp.

Allen App. No. 1-05-35, 2006-Ohio-347.

2006-0548. Brooklyn v. Fouche.

Cuyahoga App. No. 85510, 2006-Ohio-169.

2006-0549. In re Mowen.

Clermont App. No. CA2005-05-040, 2006-Ohio-344.

2006-0551. State v. Mapes.

Cuyahoga App. No. 86225, 2006-Ohio-294. Discretionary appeal not accepted. On motion for order removing David A. Mapes from death row. Motion granted.

See *State v. Penix* (1987), 32 Ohio St.3d 369, 513 N.E.2d 744, syllabus; *State v. Williams*, 103 Ohio St.3d 112, 2004-Ohio-4747, 814 N.E.2d 818, syllabus.

2006-0552. Stine v. Ry. Transfer & Storage.

Stark App. No. 2005 CA 00117, 2006-Ohio-398.

2006-0556. State v. Graham.

Hancock App. No. 5-05-13, 2006-Ohio-352.

2006-0558. State v. Driver.

Mahoning App. No. 03 MA 210, 2006-Ohio-494.

Moyer, C.J., dissents.

2006-0561. Total Exposure. Com, Ltd. v. Miami Valley Broadcasting Corp.

Montgomery App. No. 21062, 2006-Ohio-484.

2006-0563. Litman v. McLaughlin.

Ashland App. No. 05-COA-016, 2006-Ohio-433.

2006-0575. Bungard v. Ohio Dept. of Job & Family Servs.

Franklin App. No. 05AP-43, 2006-Ohio-429.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. I.

Resnick and Pfeifer, JJ., dissent.

2006-0578. State v. Ellison.

Hamilton App. No. C-050553, 2006-Ohio-2620.

2006-0582. E.B. v. T.J.

Cuyahoga App. No. 86399, 2006-Ohio-441.

2006-0584. State v. Jordan.

Cuyahoga App. No. 85817, 2006-Ohio-538.

Resnick and O'Donnell, JJ., dissent.

2006-0588. CitiFinancial, Inc. v. Lynch.

Lorain App. No. 06CA008862.

2006-0590. RLB Eng. V. McGaw.

Summit App. No. 22579, 2006-Ohio-655.

2006-0592. State v. Nieland.

Greene App. No. 2005-CA-15, 2006-Ohio-784.

Moyer, C.J., dissents.

2006-0595. Trader v. Cleveland.

Cuyahoga App. No. 86227, 2006-Ohio-295.

O'Connor, J., dissents.

2006-0597. Murphy v. Murphy.

Stark App. No. 2005-CA-00101, 2006-Ohio-557.

2006-0598. State v. Smith.

Marion App. No. 9-05-22, 2006-Ohio-735.

2006-0605. State v. Brickner-Latham.

Seneca App. No. 13-05-26, 2006-Ohio-609.

O'Donnell, J., dissents.

2006-0606. Heaton v. Carter.

Licking App. No. 05-CA-76, 2006-Ohio-633.

Resnick and Pfeifer, JJ., dissent.

2006-0607. Stinnett v. Halcore Group, Inc.

Franklin App. No. 05AP-239, 165 Ohio App.3d 464, 2006-Ohio-504.

2006-0608. State v. Scruggs.

Hamilton App. No. C-040614.

2006-0609. Cafaro v. Fatteh.

Mahoning App. No. 05 MA 162.

2006-0610. State v. Ely.

Cuyahoga App. No. 86091, 2006-Ohio-459.

O'Donnell, J., dissents.

2006-0611. Licul v. Swagelok Co.

Cuyahoga App. No. 86322, 2006-Ohio-711.

2006-0625. Davis v. Akron.

Summit App. No. 22985.

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

2006-0630. State v. Mitchell.

Trumbull App. No. 2004-T-0139, 2006-Ohio-618.

O'Connor, J., not participating.

2006-0638. In re Stevenson.

Mercer App. No. 10-05-17, 2006-Ohio-607. Discretionary appeal not accepted.

Lundberg Stratton, J., dissents.

Motion to dismiss denied as moot.

2006-0653. Architectural Interior Prod., Inc. v. Miarer Transp., Inc.

Muskingum App. No. CT2005-0052, 2006-Ohio-824. Discretionary appeal not accepted. Motion for order to show cause denied.

Lanzinger, J., would grant the motion for order to show cause.

2006-0659. State v. Thomas.

Cuyahoga App. No. 85968, 2006-Ohio-280.

2006-0668. State v. Shugars.

Hamilton App. No. C-050380, 165 Ohio App.3d 379, 2006-Ohio-718.

2006-0669. Galehouse v. Geiser.

Wayne App. No. 05CA0037, 2006-Ohio-766.

2006-0679. State v. Ensehusih.

Wayne App. No. 05CA0042, 2006-Ohio-651.

O'Connor, J., dissents.

2006-0680. State v. Travis.

Cuyahoga App. No. 86328, 2006-Ohio-802.

2006-0719. State v. Le.

Cuyahoga App. No. 87687.

2006-0725. State v. Graham.

Franklin App. No. 05AP-588, 2006-Ohio-914.

2006-0728. State v. Lohmeyer.

Lucas App. No. L-05-1059.

2006-0733. State v. Quinones.

Cuyahoga App. No. 87704.

2006-0736. State v. Fleming.

Cuyahoga App. No. 85328, 2006-Ohio-706.

Moyer, C.J., and Lanzinger, J., dissent and would accept the appeal on Proposition of Law No. I.

RECONSIDERATION OF PRIOR DECISIONS

2004-1993. Ohio Consumers' Counsel v. Pub. Util. Comm.

Public Utilities Commission, Nos. 03-2144-EL-AAM, 03-2144-EL-ATA and 03-2144-EL-UNC. Reported at 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184. On motion for reconsideration of FirstEnergy Corporation. Motion denied.

O'Connor and Lanzinger, JJ., dissent.

On motion to strike motion for reconsideration. Motion denied as moot.

2005-0118. Maumee v. Pub. Util. Comm.

Public Utilities Commission, No. 03-2144-EL-ATA. Reported at 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184. On motion for reconsideration of FirstEnergy Corporation. Motion denied.

O'Connor and Lanzinger, JJ., dissent.

2005-0766. Ohio Consumers' Counsel v. Pub. Util. Comm.

Public Utilities Commission, No. 03-2144-EL-ATA. Reported at 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184. On motion for reconsideration of FirstEnergy Corporation. Motion denied.

O'Connor and Lanzinger, JJ., dissent.

On motion to strike motion for reconsideration. Motion denied as moot.

2005-1323. State v. Coran.

Clark App. No. 2003-CA-80, 2004-Ohio-6874. Reported at 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174. On motion for reconsideration. Motion denied.

2005-1874. State v. Brown.

Lucas App. No. L-04-1148, 2005-Ohio-4348. Reported at 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174. On motion for reconsideration. Motion denied.

2006-0053. Chase Mtge. Serv., Inc. v. Latsa.

Cuyahoga App. No. 85682, 2005-Ohio-6021. Reported at 109 Ohio St.3d 1423, 2006-Ohio-1967, 846 N.E.2d 533. On motion for reconsideration, amended motion for reconsideration, and motion to clarify. Motions denied.

2006-0135. Arnold & Caruso v. Nyktas.

Lucas App. No. L-05-1011, 2005-Ohio-5566. Reported at 109 Ohio St.3d 1425, 2006-Ohio-1967, 846 N.E.2d 534. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

2006-0147. State v. Bradley.

Champaign App. No. 2004-CA-15, 2005-Ohio-6533. Reported at 109 Ohio St.3d 1425, 2006-Ohio-1967, 846 N.E.2d 534. On motion for reconsideration. Motion denied.

Resnick and O'Connor, JJ., dissent.

2006-0197. State v. Mayes.

Cuyahoga App. No. 86203, 2006-Ohio-105. Reported at 109 Ohio St.3d 1426, 2006-Ohio-1967, 846 N.E.2d 535. On motion for reconsideration. Motion denied.

2006-0235. Olynyk v. Andrish.

Cuyahoga App. No. 86009, 2005-Ohio-6632. Reported at 109 Ohio St.3d 1420, 2006-Ohio-1967, 846 N.E.2d 531. On motion for reconsideration. Motion for reconsideration granted to the following extent:

The court determines that a conflict exists. The parties are to brief the issue stated in the court of appeals' Journal Entry filed January 9, 2006:

“Whether the double dismissal rule contained in Rule 41(A) of the Ohio Rules of Civil Procedure applies to plaintiff's voluntary dismissal of claims pursuant to Rule 41(A)(2) of the Ohio Rules of Civil Procedure.”

Pfeifer, J., dissents.

The conflict case is *Van Beusecum v. Continental Builders*, Delaware App. No. 04-CAE-01-008, 2004-Ohio-7261.

Sua sponte, cause consolidated with 2006-0310, *Olynyk v. Andrish*, Cuyahoga App. No. 86009, 2005-Ohio-6632.

2006-0309. State v. Crosby.

Lucas App. No. L-03-1158, 2004-Ohio-4674. Reported at 109 Ohio St.3d 1426, 2006-Ohio-1967, 846 N.E.2d 535. On motion for reconsideration. Motion denied.

2006-0310. Olynyk v. Andrish.

Cuyahoga App. No. 86009, 2005-Ohio-6632. Reported at 109 Ohio St.3d 1427, 2006-Ohio-1967, 846 N.E.2d 535. On motion for reconsideration. Motion for reconsideration granted to the following extent:

The discretionary appeal is accepted and the cause is consolidated with 2006-0235, *Olynyk v. Andrish*, Cuyahoga App. No. 86009, 2005-Ohio-6632.

Pfeifer, J., dissents.