

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

July 5, 2006

[Cite as *07/05/2006 Case Announcements*, 2006-Ohio-3306.]

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## MERIT DECISIONS WITH OPINIONS

**2005-0767. Ohio Consumers' Counsel v. Pub. Util. Comm., 2006-Ohio-3054.**

Public Utilities Commission, No. 04-169-EL-UNC. Decision vacated and cause remanded for further proceedings.

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

**2005-0929. Fairchilds v. Miami Valley Hosp., Inc., 2006-Ohio-3055.**

Montgomery App. Nos. 20493 and 20542, 160 Ohio App.3d 363, 2005-Ohio-1712. Sua sponte, cause dismissed as having been improvidently accepted.

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

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

**2005-1215. In re T.K., 2006-Ohio-3056.**

Cuyahoga App. No. 84934, 2005-Ohio-2321. Judgment reversed.

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

**2005-1582. State ex rel. Kroger Co. v. Paysen, 2006-Ohio-3057.**

Franklin App. No. 04AP-810, 2005-Ohio-3787. Judgment affirmed.

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

**2005-1658. Reed Elsevier, Inc. v. Wilkins, 2006-Ohio-3058.**

Board of Tax Appeals, No. 2004-A-1322. Decision affirmed.

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

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

## **MERIT DECISIONS WITHOUT OPINIONS**

### **2004-2122. State ex rel. White v. Preble Cty. Bd. of Commrs.**

In Mandamus. On joint motion for approval of settlement agreement. It appearing to the court that the parties have entered into a settlement agreement resolving this cause, this cause is dismissed.

Moyer, C.J., Resnick, O'Connor, O'Donnell and Lanzinger, JJ., concur.  
Pfeifer and Lundberg Stratton, JJ., would grant the joint motion.

### **2006-0754. State v. Jackson.**

Trumbull App. No. 2004-T-0089, 2006-Ohio-1007 and 2006-Ohio-2651. On motion for stay of proceedings. Sua sponte, cause dismissed. Motion for stay denied as moot.

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

### **2006-0800. State ex rel. Dunina v. Cox.**

In Mandamus. On answers of respondents Judge Jonathan Hein, Sheriff Charles Cox, and David Caldwell.

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.

### **2006-0853. State ex rel. Holloman v. Holbrook.**

In Mandamus. On motion for summary judgment. 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.

### **2006-0953. Johnson v. Timmer-Cooper.**

In Habeas Corpus. On petition for writ of habeas corpus of Chad R. Johnson. Sua sponte, cause dismissed.

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

### **2006-0960. Wilson v. Wolfe.**

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

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

**2006-0962. Hamilton v. Gansheimer.**

In Habeas Corpus. On petition for writ of habeas corpus of Anton D. Hamilton. Sua sponte, cause dismissed.

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

**2006-0980. State ex rel. Alexander v. Russo.**

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.

**2006-1003. Barnett v. Timmer-Cooper.**

In Habeas Corpus. On petition for writ of habeas corpus of Jerome E. Barnett. Sua sponte, cause dismissed.

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

**2006-1004. Keaveney v. Parrott.**

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

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

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

Lundberg Stratton, J., dissents and would order a return of the writ.

**2006-1012. Coverdale v. Jeffreys.**

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

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

**2006-1013. State ex rel. Dingus v. Jeffreys.**

In Habeas Corpus. On petition for writ of habeas corpus of Lawrence T. Dingus. Sua sponte, cause dismissed.

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

**2006-1027. Costilla v. Brunsman.**

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

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

**MOTION AND PROCEDURAL RULINGS**

**2002-2241. State v. Monroe.**

Franklin C.P. No. 01CR04-2118. On motion to set execution date. Motion denied.

O'Connor, J., dissents and would set the execution date.

O'Donnell, J., dissents and would defer ruling on the motion.

**2005-0202. State v. Hartsock.**

Lucas App. No. L-03-1215, 2004-Ohio-6905. On motion for stay pending appeal. Motion denied.

**2005-0394. Crew Soccer Stadium LLC v. Wilkins.**

Board of Tax Appeals, No. 2001-P-368. On joint motion to vacate the Board of Tax Appeals' decision and order and to remand the cause to the Tax Commissioner. Motion granted.

**2006-0269. Sutton v. Wheeling & Lake Erie Ry.**

Summit App. No. 22642, 2005-Ohio-6912. On joint motion to stay proceedings pending final settlement. On consideration of the joint motion to stay proceedings, the court sua sponte defers consideration of the jurisdictional memoranda in this cause. The parties shall inform the court within 60 days from the date of this entry of the status of the parties' settlement agreement.

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

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

Public Utilities Commission, No. 05-792-EL-ATA. On motion of intervening appellee Dayton Power & Light Company to consolidate this cause with 2006-0829, *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, Public Utilities Commission, No. 05-792-EL-ATA, and motion to extend stay of briefing in this cause to case No. 2006-0829. Motions granted.

Pfeifer, J., dissents.

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

Public Utilities Commission, No. 05-792-EL-ATA. On motion to consolidate this cause with 2006-0646, *Ohio Consumers' Counsel v. Pub. Util. Comm.*, Public Utilities Commission, No. 05-792-EL-ATA, and motion to extend stay of briefing in case No. 2006-0646 to this cause. Motions granted.

Pfeifer, J., dissents.

**2006-0841. Bowling Green v. Chasteen.**

Wood App. No. WD-05-079. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2005-1363 and 2005-1560, *Bowling Green v. Godwin*, Wood App. No. WD-04-094, 2005-Ohio-3204; cause consolidated with 2006-0780, *Bowling Green v. Chasteen*, Wood App. No. WD-05-079; and briefing schedule stayed.

**2006-0963. State v. Cobb.**

Cuyahoga App. No. 87436. On motion for leave to file delayed appeal. Motion denied.

**2006-0976. State v. Gonzales.**

Cuyahoga App. No. 87412. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2006-0981. State v. Neeley.**

Montgomery App. No. 20842, 2006-Ohio-418. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

**2006-0986. State v. Simms.**

Athens App. No. 05CA10, 165 Ohio App.3d 83, 2005-Ohio-5681. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2006-1015. State v. Tyson.**

Allen App. Nos. 1-04-38 and 1-04-39, 2005-Ohio-1082. On motion for leave to file delayed appeal. Motion denied.

**2006-1021. State v. Thompson.**

Allen App. No. 1-05-34, 2006-Ohio-2004. On motion for stay of execution of mandate. Motion denied.

## **APPEALS ACCEPTED FOR REVIEW**

### **2006-0617. Bickers v. W. S. Life Ins. Co., Inc.**

Hamilton App. No. C-040342, 2006-Ohio-572. Discretionary appeal accepted; cause held for the decision in 2004-1739, *Sidenstricker v. Miller Pavement Maintenance, Inc.*, Franklin App. No. 03AP-827, 2004-Ohio-4653; and briefing schedule stayed.

Resnick and Pfeifer, JJ., dissent.

### **2006-0657. State v. Consilio.**

Summit App. No. 22761, 2006-Ohio-649.

Pfeifer, J., dissents.

### **2006-0703. Hall v. Banc One Mgt. Corp.**

Franklin App. No. 04AP-905, 2006-Ohio-913.

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

### **2006-0705. Terry v. Ottawa Cty. Bd. of Mental Retardation & Developmental Delay.**

Ottawa App. No. OT-05-009, 165 Ohio App.3d 638, 2006-Ohio-866. Discretionary appeal accepted on Proposition of Law No. I.

Lanzinger, J., would also accept on all other Propositions of Law.

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

### **2006-0722. Cincinnati Ins. Co. v. CPS Holdings, Inc.**

Cuyahoga App. Nos. 85967 and 85969, 2006-Ohio-713. Discretionary appeal of Cincinnati Insurance Company accepted on Proposition of Law No. I.

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

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

Discretionary appeal of Gulf Insurance Company not accepted.

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

### **2006-0780. Bowling Green v. Chasteen.**

Wood App. No. WD-05-079. Discretionary appeal accepted; cause held for the decision in 2005-1363 and 2005-1560, *Bowling Green v. Godwin*, Wood App. No. WD-04-094, 2005-Ohio-3204; cause consolidated with 2006-0841, *Bowling Green v. Chasteen*, Wood App. No. WD-05-079; and briefing schedule stayed.

### **2006-0826. State v. Davis.**

Marion App. No. 9-05-34, 2006-Ohio-1141.  
Pfeifer, O'Connor and Lanzinger, JJ., dissent.

### **APPEALS NOT ACCEPTED FOR REVIEW**

**2006-0601. State v. Hancock.**

Warren App. No. CA2005-03-040.  
Lanzinger, J., dissents.

**2006-0612. State v. Langley.**

Sandusky App. No. S-04-020, 2005-Ohio-6852.

**2006-0615. State v. Porter.**

Lucas App. No. L-04-1278, 2006-Ohio-589.

**2006-0624. State v. Bressler.**

Van Wert App. No. 15-05-13, 2006-Ohio-611.

**2006-0627. State v. Bergman.**

Union App. No. 14-06-05.

**2006-0628. State v. Williams.**

Trumbull App. No. 2004-T-0136, 2006-Ohio-617.  
Resnick, J., dissents.

**2006-0632. State v. Allen.**

Hancock App. No. 5-05-40.

**2006-0635. Madison v. Buckeye Union Ins. Co.**

Cuyahoga App. No. 86311, 2006-Ohio-449.  
Resnick and Pfeifer, JJ., dissent.

**2006-0636. Wright v. Columbus.**

Franklin App. No. 05AP-432, 2006-Ohio-759.  
O'Donnell, J., dissents.

**2006-0642. State v. Hurst.**

Defiance App. No. 4-05-38.  
Resnick, J., dissents.

**2006-0648. State v. Raver.**

Franklin App. No. 05AP-374, 2006-Ohio-645. Discretionary appeal not accepted.  
Motion to strike notice of appeal denied as moot.

**2006-0654. Miller v. CNA Commercial Ins.**

Summit App. No. 22964.

**2006-0656. Starman, Inc. v. Jaftak Realty Invest., Ltd.**

Ashland App. No. 04-COA-079, 2006-Ohio-779.

**2006-0664. Lynch v. Natl. City Bank.**

Cuyahoga App. No. 87352.

**2006-0666. Fairbanks Capital Corp. v. Richards.**

Cuyahoga App. No. 86173, 2006-Ohio-102.

**2006-0670. Amann v. Clear Channel Communications, Inc.**

Hamilton App. No. C-050411, 165 Ohio App.3d 291, 2006-Ohio-714.  
Moyer, C.J., and O'Donnell, J., dissent.

**2006-0671. State v. Perdue.**

Mahoning App. No. 04 MA 119, 2005-Ohio-2703.

**2006-0672. Asset Acceptance, L.L.C. v. Rees.**

Franklin App. No. 05AP-388, 2006-Ohio-794.

**2006-0675. State v. Thornton.**

Montgomery App. No. 20963, 2006-Ohio-786.  
Resnick and O'Donnell, JJ., dissent.

**2006-0677. State v. Brooks.**

Mahoning App. No. 04 MA 260.

**2006-0678. State v. Roberts.**

Guernsey App. No. 2005-CA-26, 2006-Ohio-782.

**2006-0685. Seymour v. Pierson.**

Stark App. No. 2005A00218, 2006-Ohio-961.

**2006-0689. State v. Dotson.**



Columbiana App. No. 05 CO 28, 2006-Ohio-1093.  
Lundberg Stratton, J., dissents.

**2006-0692. Cincinnati Ins. Co. v. Donzelli.**  
Summit App. No. 22686, 2006-Ohio-765.  
Pfeifer and O'Donnell, JJ., dissent.

**2006-0694. State v. Porterfield.**  
Trumbull App. No. 2006-T-0001, 2006-Ohio-741.

**2006-0697. Akron v. Norman.**  
Summit App. No. 22743, 2006-Ohio-769.

**2006-0698. Fridrich v. Seuffert Constr. Co., Inc.**  
Cuyahoga App. No. 86395, 2006-Ohio-1076.  
Lundberg Stratton, J., dissents.

**2006-0699. Figetakis v. Owners Ins. Co.**  
Summit App. No. 22874, 2006-Ohio-918.

**2006-0704. State v. Reid.**  
Greene App. No. 2005CA0028, 2006-Ohio-840.  
O'Connor and Lanzinger, JJ., dissent.

**2006-0706. Bevier v. Pfefferle.**  
Erie App. No. E-05-046, 2006-Ohio-857.  
Pfeifer, J., dissents.

**2006-0707. Artex Oil Co. v. Wells.**  
Guernsey App. No. 05CA28, 2006-Ohio-849.

**2006-0711. State v. Martin.**  
Hamilton App. No. C-060111.

**2006-0712. State v. Martin.**  
Hamilton App. No. C-060117.

**2006-0713. State v. Gordon.**  
Franklin App. No. 05AP-1361. Discretionary appeal not accepted. Motion to strike notice of appeal and memorandum in support of jurisdiction denied as moot.

**2006-0716. State v. Guenther.**

Lorain App. No. 05CA008663, 2006-Ohio-767.

**2006-0732. State v. Hermison.**

Trumbull App. No. 93-T-4930.

**2006-0734. Revay v. C.S.E.A.**

Cuyahoga App. No. 87426.

**2006-0739. Coleman v. Baker & Hostetler, LLP.**

Cuyahoga App. No. 86361, 2006-Ohio-685.

**2006-0740. State v. Davis.**

Clark App. No. 2005-CA-43, 2006-Ohio-1592.

Lundberg Stratton, J., dissents.

**2006-0744. Norris v. Ohio Dept. of Rehab. & Corr.**

Franklin App. No. 05AP-762, 2006-Ohio-1750.

**2006-0748. State v. Daquer.**

Hamilton App. No. C-050003, 2006-Ohio-955.

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

**2006-0750. Owca v. Owca.**

Medina App. No. 05CA0023-M, 2006-Ohio-1044.

**2006-0759. State v. Carnail.**

Cuyahoga App. No. 86539, 2006-Ohio-1246.

**2006-0769. State v. Pelfrey.**

Montgomery App. No. 20763, 2006-Ohio-1605.

Moyer, C.J., and O'Donnell, J., dissent and would accept the appeal and hold the cause for the decision in 2006-0151, *State v. Carswell*, Warren App. No. CA2005-04-047, 2005-Ohio-6547.

**2006-0773. State v. McGuire.**

Cuyahoga App. No. 86608, 2006-Ohio-1330.

**2006-0781. Wolf v. Erie Cty. Child Support Enforcement Agency.**

Erie App. No. E-05-084.

**2006-0783. State v. Hines.**

Allen App. No. 1-04-47, 2005-Ohio-6870.

**2006-0786. State v. Burgan.**

Cuyahoga App. No. 86176, 2006-Ohio-812.

**2006-0791. State v. Owens.**

Summit App. No. 23115.

**2006-0796. Urban v. Osborn Mfg., Inc.**

Cuyahoga App. No. 86287, 165 Ohio App.3d 673, 2006-Ohio-1080.  
Resnick, J., dissents.

**2006-0805. State v. Clark.**

Mahoning App. No. 04 MA 246, 2006-Ohio-1155.  
Lanzinger, J., dissents.

**2006-0806. State v. Morris.**

Stark App. No. 2004CA00232, 2005-Ohio-4967.

**2006-0811. State v. Troglin.**

Union App. No. 14-04-41, 2005-Ohio-6562.

**2006-0813. State v. Mitchell.**

Montgomery App. No. 21096, 2006-Ohio-1601.

**2006-0816. State v. Suttles.**

Hamilton App. No. C-040030.

**2006-0817. State v. Thomson.**

Lucas App. No. L-05-1213, 2006-Ohio-1224.

**2006-0823. State v. Adams.**

Trumbull App. No. 2004-T-0053, 2005-Ohio-4332.

**2006-0838. State v. Rampey.**

Stark App. No. 2004 CA 00102, 2006-Ohio-1383.

**2006-0854. State v. Trewartha.**

Franklin App. No. 04AP-963, 165 Ohio App.3d 91, 2005-Ohio-5697.

**2006-0861. Lee v. Lee.**

Cuyahoga App. No. 86383, 2006-Ohio-1243.

O'Donnell, J., dissents.

**2006-0863. State v. Henley.**

Montgomery App. No. 20789, 2005-Ohio-6142.

**2006-0865. State v. Cunigan.**

Montgomery App. No. 21356.

**2006-0868. State v. Parks.**

Montgomery App. No. 20905, 2005-Ohio-6395.

**2006-0881. State v. Williams.**

Licking App. No. 05-CA-36, 2006-Ohio-1381.

**2006-0892. State v. Hooks.**

Butler App. Nos. CA2004-02-047, CA2004-02-050 and CA2004-02-051, 2006-Ohio-1272.

**2006-0939. State v. Jackson.**

Hamilton App. Nos. C-040811, C-040812, C-040813 and C-040814.

Moyer, C.J., dissents.

**RECONSIDERATION OF PRIOR DECISIONS**

**2005-0247. Smith v. Conley.**

Stark App. No. 2004CA00068, 2005-Ohio-1433. Reported at 109 Ohio St.3d 141, 2006-Ohio-2035, 846 N.E.2d 509. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

**2005-0585. State v. Straughn.**

Hamilton App. No. C-040093. Reported at 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174. On motion for reconsideration. Motion for reconsideration granted to the following extent:

The order affirming the judgment of the court of appeals is vacated. The portion of the judgment of the court of appeals that modified the defendant's

sentence is reversed, and the cause is remanded to the trial court for resentencing consistent with our decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

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

**2005-0688. State v. Sieng.**

Franklin App. No. 04AP-556, 2005-Ohio-1003. Reported at 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174. On motion for reconsideration. Motion denied.

**2005-0875. State v. Colvin.**

Franklin App. No. 04AP-421, 2005-Ohio-1448. Reported at 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174. On motion for reconsideration. Motion denied.

**2005-1046. State v. Colvin.**

Franklin App. No. 04AP-421, 2005-Ohio-1448. Reported at 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174. On motion for reconsideration. Motion denied.

**2005-2176. State v. Short.**

Cuyahoga App. No. 83804, 2005-Ohio-4578. Reported at 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174. On motion for reconsideration. Motion denied.

**2006-0175. State v. Ikharo.**

Franklin App. No. 05AP-167, 2005-Ohio-6616. Reported at 109 Ohio St.3d 1456, 2006-Ohio-2226, 847 N.E.2d 6. On motion for reconsideration. Motion denied.