

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 18, 2006

[Cite as *10/18/2006 Case Announcements*, 2006-Ohio-5351.]

MERIT DECISIONS WITH OPINIONS

2004-0586. State v. Drummond, 2006-Ohio-5084.

Mahoning C.P. No. 03-CR-358. Judgment affirmed.

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

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

MERIT DECISIONS WITHOUT OPINIONS

2006-1437. State ex rel. Stadmire v. Court of Common Pleas of Cuyahoga Cty.

In Mandamus. 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.

2006-1453. State ex rel. Dugger v. Court of Common Pleas of Franklin Cty.

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.

2006-1454. State ex rel. Abrams v. Grand Rapids.

In Mandamus. On motions to dismiss. Motions to dismiss granted. Cause dismissed.

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

2006-1625. Lyles v. Lane.

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

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

2006-1659. Trouten v. Petkovitch.

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

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

2006-1661. McAllister v. Kelly.

In Habeas Corpus. On petition for writ of habeas corpus of John L. McAllister and motion to amend petition for writ of habeas corpus.

Sua sponte, cause dismissed. Motion to amend petition denied as moot.

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

2006-1674. McMannis v. Eberlin.

In Habeas Corpus. On petition for writ of habeas corpus of Larry Gale McMannis. Sua sponte, cause dismissed.

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

2006-1677. Rittner v. Williams.

In Habeas Corpus. On petition for writ of habeas corpus of Daniel L. Rittner Sr. and motion to waive strict compliance to R.C. 2969 and affidavits.

Sua sponte, cause dismissed. Motion to waive dismissed as moot.

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

MOTION AND PROCEDURAL RULINGS

2005-2299. Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless.

Cuyahoga App. No. 85620, 2005-Ohio-5439. On motions for admission pro hac vice of Stephen R. Patton and Robert R. Gasaway by John W. Zieger. Motions granted.

Resnick, J., not participating.

2005-2302. Discount Cellular, Inc. v. Ameritech Mobile Communications, Inc.
Cuyahoga App. No. 85618, 2005-Ohio-5437. On motions for admission pro hac vice of Stephen R. Patton and Robert R. Gasaway by John W. Zieger. Motions granted.

Resnick, J., not participating.

2006-0165. State ex rel. Shelly Materials, Inc. v. Clark Cty. Bd. of Commrs.
Clark App. No. 2003-CA-72, 2005-Ohio-6682. On requests for oral argument. Requests granted.

2006-0231. State v. Cottrell.
Columbiana App. No. 04 CO 53, 2005-Ohio-6923. On motion for resentencing. Motion denied.

O'Connor, J., dissents.

2006-0830. Elyria Foundry Co. v. Pub. Util. Comm.
Public Utilities Commission, Nos. 05-1125-EL-ATA, 05-1126-EL-AAM, 05-1127-EL-UNC and 05-704-EL-ATA. On motion of FirstEnergy Corporation to strike amicus curiae brief of Ohio Consumers' Counsel and motion to strike FirstEnergy Corporation's motion to strike amicus curiae brief of Ohio Consumers' Counsel. Motions denied.

2006-0845. State ex rel. Dunning v. Kimbler.
In Prohibition. On bill and documentation in support of an award for attorney fees. Attorney fees in the amount of \$158.42 are awarded.

2006-1121. State ex rel. Dist. 1199, Health Care & Social Serv. Union, SEIU v. Ohio Dept. of Job & Family Servs.

In Mandamus. On answer of respondent. Alternative writ granted. The following schedule is set for the 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; relators shall file their brief within 10 days after the filing of evidence; respondents shall file their brief within 20 days after the filing of relators' brief; and relators may file a reply brief within 7 days after the filing of respondents' brief.

2006-1165. North v. Beightler.
Marion App. No. 9-06-11. On motion to consolidate case with 2006-1634, *Watkins v. Collins*. Motion denied.

2006-1577. State v. Mosley.

Franklin App. No. 05AP-701, 2006-Ohio-3102. On motion for leave to file delayed appeal. Motion denied.

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

2006-1585. State v. Hall.

Franklin App. No. 05AP-957, 2006-Ohio-2742. On motion for leave to file delayed appeal. Motion denied.

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

2006-1586. State v. Edgington.

Portage App. Nos. 2004-P-0098 and 2004-P-0103, 2005-Ohio-822. On motion for leave to file delayed appeal. Motion denied.

2006-1608. State v. Schlee.

Lake App. No. 2005-L-105, 2006-Ohio-3208. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 3 of the court of appeals' Judgment Entry filed August 9, 2006:

"Whether the trial court can recast [a]ppellant's Motion For Relief From Judgment as a petition for postconviction relief when it has been unambiguously presented as a Civil Rule 60(B) [motion]."

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

The conflict case is *State v. Lehrfeld*, Hamilton App. No. C-030390, 2004-Ohio-2277.

2006-1633. Ohio Partners for Affordable Energy v. Pub. Util. Comm.

Public Utilities Commission, No. 05-474-GA-ATA. On motion for admission pro hac vice of David C. Rinebolt by Colleen L. Mooney. Motion granted.

Pfeifer, J., dissents.

2006-1642. State v. Peals.

Lucas App. No. L-03-1355, 2006-Ohio-591. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

2006-1650. State v. Thompson.

Franklin App. No. 05AP-1268, 2006-Ohio-3440. On motion for leave to file delayed appeal. Motion denied.

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

2006-1654. State v. Wilson.

Montgomery App. No. 20910, 2005-Ohio-6666. On motion for leave to file delayed appeal. Motion denied.

2006-1665. State v. Puckett.

Greene App. No. 05CA48, 2006-Ohio-1127. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-1669. State v. Wallace.

Hamilton App. Nos. C-050266 and C-050281. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

APPEALS ACCEPTED FOR REVIEW

2006-1279. In re Special Docket No. 73958.

Cuyahoga App. Nos. 87777 and 87816. Discretionary appeal accepted.

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

On motions for admission pro hac vice of Mark C. Meyer, David B. Rodes, and Diana Nickerson Jacobs by Joseph J. Cirilano and motion for admission pro hac vice of Vincent L. Greene by Richard E. Reverman. Motions granted.

2006-1302. Culbreath v. Golding Ents., LLC.

Franklin App. No. 05AP-1230, 2006-Ohio-2606.

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

2006-1304. Leininger v. Pioneer Natl. Latex.

Ashland App. No. 05-COA-048, 2006-Ohio-2673.

Resnick and Pfeifer, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2006-0543. State v. Hyland.

Butler App. No. CA2005-05-103, 2006-Ohio-339.

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

2006-1043. State v. Medina.

Franklin App. No. 05AP-664, 2006-Ohio-1648.

2006-1276. State v. Ogletree.

Cuyahoga App. No. 86500, 2006-Ohio-2320.

2006-1288. Doe v. Farrell.

Montgomery App. No. 21105, 167 Ohio App.3d 14, 2006-Ohio-2676.
Discretionary appeal not accepted.

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

On motion for admission pro hac vice of David E. Block and Jennifer A. Schwartz by Clifford C. Masch. Motion granted.

2006-1295. State v. Collier.

Franklin App. No. 05AP-716, 2006-Ohio-2605.

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

2006-1296. State v. Benning.

Hamilton App. No. C-040636.

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

2006-1297. Welch v. Ameritech Credit Corp.

Franklin App. No. 04AP-1123, 2006-Ohio-2528.

Resnick, J., not participating.

2006-1300. Glaser v. Glaser.

Medina App. No. 05CA0014-M, 2006-Ohio-2555.

O'Donnell, J., dissents.

2006-1303. Cusack v. ICS Holdings, Inc.

Franklin App. No. 05AP-914, 2006-Ohio-2536.

Resnick, J., dissents.

2006-1305. Mitchell v. W. Res. Agency.

Cuyahoga App. No. 86708, 2006-Ohio-2475.

2006-1306. Lennon v. Cuyahoga Cty. Juvenile Court.

Cuyahoga App. No. 86651, 2006-Ohio-2587.

2006-1307. Wilburn v. Wilburn.

Lorain App. No. 05CA008740, 2006-Ohio-2553.

Resnick and O'Donnell, JJ., dissent.

2006-1308. Homler v. Homler.

Lorain App. No. 05CA008752, 2006-Ohio-2556.

2006-1310. State v. Williams.

Montgomery App. No. 19963, 2005-Ohio-3172.

2006-1312. In re Guardianship of Brady.

Cuyahoga App. No. 86533, 2006-Ohio-2212.

2006-1315. In re Craig.

Tuscarawas App. Nos. 2006AP020012 and 2006AP030014, 2006-Ohio-3026 and 2006-Ohio-3031.

Moyer, C.J., dissents and would accept the appeal and hold the cause for the decision in 2006-0503, *In re Foster*, Cuyahoga App. No. 85716, 2006-Ohio-88.

2006-1321. State v. Parker.

Cuyahoga App. No. 87999.

2006-1322. Rush v. Oblinger.

Cuyahoga App. No. 86751, 2006-Ohio-2459.

2006-1324. Rinehart v. Hauck.

Ross App. No. 05CA2859, 2006-Ohio-1719.

2006-1327. Interstate Properties v. Prasanna, Inc.

Summit App. Nos. 22734 and 22757, 2006-Ohio-2686.

2006-1328. Shimola v. Westlake.

Cuyahoga App. No. 87744.

O'Donnell, J., not participating.

2006-1336. State v. Jordan.

Hamilton App. No. C-040897, 2006-Ohio-2759.

2006-1339. State v. Call.

Montgomery App. No. 21184, 2006-Ohio-2905.

2006-1344. State v. Ryan.

Lucas App. No. L-05-1165, 2006-Ohio-2927.

2006-1346. Hous. Advocates, Inc. v. Farmers Ins. Co. of Columbus.

Cuyahoga App. No. 86775, 2006-Ohio-2467.

2006-1347. Chase Mtge. Co. W. v. Coleman.

Cuyahoga App. No. 88158.

2006-1348. Cook v. Caruso.

Lucas App. No. L-05-1208, 2006-Ohio-1982. Discretionary appeal not accepted. Motion to dismiss appeal denied as moot.

On motion for admission pro hac vice of Robert Golden and Armand Kunz by Craig Wakefield. Motion granted.

2006-1350. State v. Botts.

Franklin App. No. 06AP-349.

2006-1353. O'Connor v. Trans World Servs., Inc.

Franklin App. No. 05AP-560, 2006-Ohio-2747.

2006-1355. Advent v. Allstate Ins. Co.

Franklin App. No. 05AP-1092, 2006-Ohio-2743.

Pfeifer, J., dissents.

Resnick, J., not participating.

2006-1356. State v. Copley.

Franklin App. No. 04AP-1128, 2006-Ohio-2737.

2006-1358. State v. Lopshire.

Portage App. No. 2005-P-0037, 2006-Ohio-3215.

2006-1359. State v. Duffy.

Knox App. Nos. 05 CA 18 and 05 CA 19, 2006-Ohio-2724.

2006-1369. Wayne Homes, LLC v. Demand Waterproofing, Inc.

Stark App. No. 2005 CA 00237, 2006-Ohio-2843.

Resnick, J., dissents.

2006-1371. Estate of Mathewson v. Decker.

Union App. No. 14-05-59, 2006-Ohio-2790.

Pfeifer, J., dissents.

2006-1372. Bunosky v. Metro. Property & Cas. Ins. Co.

Portage App. No. 2005-P-0073, 2006-Ohio-2768.

Pfeifer, J., dissents.

2006-1373. State v. Burrell.

Cuyahoga App. No. 86702, 2006-Ohio-2593.

Moyer, C.J., dissents.

Lundberg Stratton and Lanzinger, JJ., dissent and would accept the appeal and hold the cause for the decision in 2006-0294 and 2006-0298, *State v. Crager*, Marion App. No. 9-04-54, 2005-Ohio-6868.

2006-1374. State v. Schlee.

Lake App. No. 2005-L-105, 2006-Ohio-3208.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

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

2006-1376. Hasenfratz v. Warnement.

Allen App. No. 10-6-03, 2006-Ohio-2797.

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

2006-1377. In re Smith.

Union App. No. 14-05-33, 2006-Ohio-2788.

Moyer, C.J., dissents.

2006-1380. Mandalaywala v. Omnitech Electronic, Inc.

Franklin App. No. 05AP-1216, 2006-Ohio-2872.

2006-1382. State v. Gregorino.

Portage App. No. 2003-P-0071, 2004-Ohio-4698.

Resnick and O'Connor, JJ., dissent.

2006-1385. Ohio Bar Liability Ins. Co. v. Silverman.

Franklin App. No. 05AP-923, 2006-Ohio-3016.

2006-1387. Whitfield v. Dayton.

Montgomery App. No. 21072, 2006-Ohio-2917.

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

2006-1388. Mack Trucks, Inc. v. Motor Vehicle Dealers Bd.

Franklin App. No. 05AP-768, 2006-Ohio-2748.

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

Pfeifer, J., dissents.

2006-1389. State v. Large.

Portage App. No. 2005-P-0013, 2006-Ohio-3422.

2006-1392. J & K Schlaegel, Inc. v. Bd. of Trustees of Union Twp.

Champaign App. Nos. 2005-CA-31 and 2005-CA-34, 2006-Ohio-2913.

2006-1393. TGR Ents., Inc. v. Kozhev.

Montgomery App. No. 20958, 167 Ohio App.3d 29, 2006-Ohio-2915.

2006-1395. State v. Midcap.

Summit App. No. 22908, 2006-Ohio-2854.

O'Donnell, J., dissents.

2006-1396. State v. Thomas.

Clark App. No. 2004 CA 60, 2005-Ohio-3870.

2006-1399. Crickets of Ohio, Inc. v. Hines Invest., LLC.

Fairfield App. No. 05CA80, 2006-Ohio-2901.

2006-1401. State v. White.

Hamilton App. No. C-050197.

2006-1405. State v. Aleman.

Cuyahoga App. No. 88181.

2006-1413. State v. Volgaes.

Lawrence App. No. 05CA28, 2006-Ohio-3788. Discretionary appeal not accepted. Motion for stay denied as moot.

2006-1425. State v. Lake.

Wood App. No. WD-04-072, 2006-Ohio-3059.

2006-1430. State v. Nichols.

Lake App. No. 2005-L-017, 2006-Ohio-2934.

2006-1433. State v. Brown.

Franklin App. No. 05AP-929, 2006-Ohio-3266.

2006-1449. State v. Spitzig.

Cuyahoga App. No. 86515, 2006-Ohio-3006.

2006-1455. State v. Kolvek.

Summit App. No. 22967, 2006-Ohio-3113.

2006-1458. Hardy v. Belmont Correctional Inst.

Franklin App. No. 06AP-116, 2006-Ohio-3316.

2006-1463. State v. Williams.

Montgomery App. No. 19963, 2005-Ohio-3172.

2006-1467. Henson v. K. Collins Plumbing, Inc.

Clermont App. No. CA2005-07-069, 2006-Ohio-3090.

2006-1474. State v. White.

Clark App. No. 2005-CA-60, 2006-Ohio-3762.

2006-1479. State v. Savage.

Lake App. No. 2005-L-128, 2006-Ohio-3419.

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

2006-1481. State v. DeLeon.

Defiance App. No. 4-04-34.

2006-1487. State v. Davis.

Hamilton App. No. C-040665, 2006-Ohio-3171.

2006-1498. State v. Karasek.

Montgomery App. Nos. 19565, 20253, 20316, 20399, 20868 and 20935.

2006-1509. Foremost Ins. Co. v. Motorists Mut. Ins. Co.

Cuyahoga App. No. 86829, 2006-Ohio-3022.

Lundberg Stratton, J., dissents.

2006-1510. State v. Gonzalez.

Hamilton App. No. C-020384, 154 Ohio App.3d 9, 2003-Ohio-4421.

2006-1546. State v. Brown.

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

RECONSIDERATION OF PRIOR DECISIONS

2005-0262. Doe v. Archdiocese of Cincinnati.

Hamilton App. Nos. C-030900, C-030949, C-030950 and C-040072, 2004-Ohio-7003. Reported at 110 Ohio St.3d 157, 2006-Ohio-4087, 852 N.E.2d 157. On motion for reconsideration as to claim of John Doe No. 5. Motion denied.

Pfeifer, J., dissents.

Resnick and Lanzinger, JJ., not participating.

2005-1639. Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 2004-A-738, 2004-A-739, 2004-A-740, 2004-A-741, 2004-A-742, 2004-A-743, 2004-A-746, 2004-A-747 and 2004-A-748. Reported at 110 Ohio St.3d 1242, 2006-Ohio-4091, 852 N.E.2d 178. On motion for reconsideration. Motion denied. Motions to supplement the record and to strike the motion to supplement the record denied as moot.

Pfeifer, J., dissents.

2006-0831. State v. Johnson.

Lucas App. No. L-05-1001, 2006-Ohio-1232. Reported at 110 Ohio St.3d 1464, 2006-Ohio-4288, 852 N.E.2d 1213. On motion for reconsideration. Motion denied.

2006-0891. Brown v. State.

Lucas App. No. L-05-1050, 2006-Ohio-1393. Reported at 110 Ohio St.3d 1464, 2006-Ohio-4288, 852 N.E.2d 1213. On motion for reconsideration. Motion denied.

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

2006-0906. Ealy v. McLin.

Montgomery App. No. 21320. Reported at 110 Ohio St.3d 1464, 2006-Ohio-4288, 852 N.E.2d 1213. On motion for reconsideration. Motion denied.

2006-0983. Tihansky v. Weston, Hurd, Fallon, Paisley & Howley, L.L.P.

Cuyahoga App. No. 86536, 2006-Ohio-1359. Reported at 110 Ohio St.3d 1466, 2006-Ohio-4288, 852 N.E.2d 1214. On motion for reconsideration. Motion denied.

2006-0999. Jeavons v. Werner Ents., Inc.

Ashland App. No. 2004-COA-087, 2006-Ohio-1754. Reported at 110 Ohio St.3d 1466, 2006-Ohio-4288, 852 N.E.2d 1214. On motion for reconsideration. Motion denied.

Resnick and Pfeifer, JJ., dissent.

2006-1033. St. Marys v. Auglaize Cty. Bd. of Commrs.

Auglaize App. No. 2-05-17, 2006-Ohio-1773. Reported at 110 Ohio St.3d 1464, 2006-Ohio-4288, 852 N.E.2d 1213. On motion for reconsideration. Motion granted. Discretionary appeal accepted on Proposition of Law No. IV.

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

Sua sponte, the court orders that appellant's merit brief shall be filed within forty days, and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. VI.

2006-1230. Wymes v. Eberlin.

In Habeas Corpus. Reported at 110 Ohio St.3d 1461, 2006-Ohio-4288, 852 N.E.2d 1211. On motion for reconsideration. Motion denied.

2006-1338. Potts v. Eberlin.

In Habeas Corpus. Reported at 110 Ohio St.3d 1461, 2006-Ohio-4288, 852 N.E.2d 1211. On motion for reconsideration. Motion denied.