

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

June 17, 2009

[Cite as *06/17/2009 Case Announcements, 2009-Ohio-2751.*]

MERIT DECISIONS WITH OPINIONS

2008-0780. Sheet Metal Workers' Internatl. Assn., Local Union No. 33 v. Gene's Refrigeration, Heating & Air Conditioning, Inc., Slip Opinion No. 2009-Ohio-2747.

Medina App. No. 06CA0104-M, 2008-Ohio-1005. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

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

Pfeifer, J., dissents.

2008-1012. State v. Clinkscale, Slip Opinion No. 2009-Ohio-2746.

Franklin App. No. 06AP-1109, 177 Ohio App.3d 294, 2008-Ohio-1677. Judgment reversed and cause remanded.

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

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

MERIT DECISIONS WITHOUT OPINIONS

2009-0628. Collins v. Ohio State Univ.

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

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

2009-0638. Bunting v. Canton Mun. Court.

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

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

2009-0659. State ex rel. Rohr v. Indus. Comm.

In Prohibition. On motion to dismiss of respondent Gerstenslager Company and answer and motion for judgment on the pleadings of respondent Industrial Commission. Motion for judgment on the pleadings granted. Cause dismissed. Motion to dismiss denied as moot.

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

2009-0710. State ex rel. Consumers' Counsel v. Schriber.

In Prohibition. On motions to dismiss of Columbus Southern Power Company, Ohio Power Company, and commissioners of the Public Utilities Commission. The complaint does not state a claim justiciable in prohibition. The issues raised by the complaint may be resolved on appeal, and thus relators have an adequate remedy at law. *State ex rel. Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.* (1962), 173 Ohio St. 450, 452, 183 N.E.2d 782. Motions to dismiss granted. Cause dismissed.

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

Pfeifer, J., dissents and would deny the motions to dismiss and grant an alternative writ.

MOTION AND PROCEDURAL RULINGS

1996-1956. State v. Reynolds.

Summit App. No. 16845. On motion to set new execution date. Motion granted. It is ordered that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Thursday, October 8, 2009, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said warden shall make due return thereof to the Clerk of the Court of Common Pleas of Summit County.

O'Connor, J., not participating.

1998-0552. State v. Smith.

Lucas App. No. L-94-093. On motion to set execution date. Motion granted. It is ordered that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Thursday, January 7, 2010, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said warden shall make due return thereof to the Clerk of the Court of Common Pleas of Lucas County.

2001-0524. State v. Brown.

Mahoning App. No. 96 CA 56. On motion to set execution date. Motion granted. It is ordered that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Thursday, February 4, 2010, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said warden shall make due return thereof to the Clerk of the Court of Common Pleas of Mahoning County.

2008-2136. Estate of Williams v. Deutsche Bank Trust Co. Am.

Cuyahoga App. No. 90967, 2008-Ohio-3981. On motion for leave to file judicial review in United States District Court or, in the alternative, motion to vacate or set aside judgment. Motion denied.

O'Donnell, J., dissents.

2009-0038. State ex rel. Hardin v. Aey.

In Mandamus. On relator's merit brief and affidavits for damages and attorney fees filed pursuant to the court's March 25, 2009 order. Relator is awarded statutory damages in the amount of \$1,000, attorney fees in the amount of \$4,175, and costs in the amount of \$140.

Pfeifer and O'Donnell, JJ., would award attorney fees in the amount of \$15,855.

2009-0614. State ex rel. Morgan v. Strickland.

In Mandamus. On motion to refer case to mediation counsel. Motion denied.

2009-0761. State v. Anderson.

Summit App. No. 24357. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

2009-0788. State v. Gilbert.

Cuyahoga App. No. 90856, 2009-Ohio-607. On motion for leave to file delayed appeal. Motion granted.

O'Donnell, J., dissents.

2009-0817. State v. Sims.

Butler App. No. CA2007-11-300, 2009-Ohio-550. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2009-0822. State v. Martinez.

Summit App. No. 24037, 2008-Ohio-4845. On motion for leave to file delayed appeal. Motion denied.

Cupp, J., dissents.

2009-0911. State v. Chavers.

Wayne App. No. 09CA0012. On motion for stay of execution of sentence pending appeal. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2009-0402. State v. Lee.

Van Wert App. No. 15-08-06, 2009-Ohio-299. Discretionary appeal accepted; cause held for the decision in 2008-1725, *State v. Lester*, Hamilton App. No. C-070383, 2008-Ohio-3570; and briefing schedule stayed.

Pfeifer and O'Donnell, JJ., dissent.

2009-0441. Cleveland v. Washington Mut. Bank.

Cuyahoga App. No. 91379, 179 Ohio App.3d 692, 2008-Ohio-6956. Discretionary appeal accepted on Proposition of Law Nos. II and III. Cause to be argued the same day as 2008-2230, *Cleveland v. Destiny Ventures, L.L.C.*, Cuyahoga App. No. 91018, 2008-Ohio-4587.

Pfeifer, Lundberg Stratton, and Lanzinger, JJ., would also accept the appeal on Proposition of Law No. I.

2009-0442. State v. Norris.

Cuyahoga App. No. 91000, 2009-Ohio-34. Discretionary appeal accepted; cause held for the decision in 2007-1812, *State v. Harris*, Hamilton App. No. C-060587, 2007-Ohio-857; and briefing schedule stayed.

Pfeifer and O'Connor, JJ., dissent.

2009-0451. State v. Brown.

Cuyahoga App. No. 90798, 2009-Ohio-127. Discretionary appeal accepted; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

Moyer, C.J., would order briefing on Proposition of Law No. I.

O'Connor and Lanzinger, JJ., would not accept the appeal on Proposition of Law Nos. II and III.

O'Donnell, J., dissents.

2009-0477. State v. Dunlap.

Cuyahoga App. No. 91165, 2009-Ohio-134. Discretionary appeal accepted. Briefing shall proceed on Proposition of Law No. I in accordance with the Rules of Practice of the Supreme Court of Ohio. The cause is held on Proposition of Law Nos. II and III for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387, and the briefing schedule is stayed as to those propositions of law.

Pfeifer, J., dissents.

2009-0542. Adams v. Goodyear Tire & Rubber Co.

Cuyahoga App. No. 91404, 2009-Ohio-491.

O'Donnell, J., dissents.

2009-0547. State v. Sellers.

Cuyahoga App. No. 91043, 2009-Ohio-485. Discretionary appeal accepted; cause held for the decision in 2007-1812, *State v. Harris*, Hamilton App. No. C-060587, 2007-Ohio-857; and briefing schedule stayed.

Pfeifer, J., dissents.

2009-0605. State v. Prade.

Summit App. No. 24296, 2009-Ohio-704.

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

O'Connor, J., not participating.

APPEALS NOT ACCEPTED FOR REVIEW

2009-0152. Hickory Grove Investors, Ltd. v. Jackson.

Franklin App. No. 08AP-514, 180 Ohio App.3d 60, 2008-Ohio-6428.

Cupp, J., dissents and would accept the appeal on Proposition of Law Nos. II and III and reverse the judgment of the court of appeals on the authority of *Lang v. Holly Hill Motel, Inc.*, ___ Ohio St. ___, 2009-Ohio-2495, ___ N.E.2d ___.

2009-0287. State v. Davis.

Licking App. No. 2008-CA-16, 2008-Ohio-6841.

2009-0331. State v. Motley.

Summit App. No. 24182, 2008-Ohio-6937.

2009-0366. State ex rel. Republic Servs. of Ohio II, L.L.C. v. Pike Twp. Bd. of Trustees.

Stark App. No. 2007CA00344, 2009-Ohio-172.

2009-0405. State v. Lawson.

Licking App. No. 08-CA-52, 2009-Ohio-115.

2009-0408. State v. Ilyayev.

Cuyahoga App. No. 92631.

2009-0417. State v. Houston.

Cuyahoga App. No. 90780, 2009-Ohio-224.

O'Connor, J., dissents.

2009-0419. State v. Dodson.

Clark App. No. 2007 CA 6, 2009-Ohio-154.

2009-0423. State v. Smith.

Fayette App. No. CA2006-08-030, 2009-Ohio-197.

2009-0426. Manor v. Snell.

Hamilton App. No. C-070681.

2009-0433. State v. Ross.

Allen App. No. 1-08-47, 2009-Ohio-188.

2009-0436. State v. Yeaples.

Seneca App. No. 13-08-14, 2009-Ohio-184.

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

2009-0439. State v. Roberson.

Stark App. No. 2008CA00275. Discretionary appeal not accepted. Motion to strike notice of appeal and to dismiss denied as moot.

2009-0440. State v. Ozinga.

Ashtabula App. No. 2008-A-0038, 2009-Ohio-181.
O'Donnell, J., dissents.

2009-0445. State v. Maynard.

Medina App. No. 07CA0116-M, 2009-Ohio-282.

2009-0447. State v. Curtis.

Butler App. No. CA2008-01-008, 2009-Ohio-192.

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

2009-0450. State v. Bates.

Guernsey App. No. 08 CA 15, 2009-Ohio-275.

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

2009-0452. State v. Whitfield.

Montgomery App. No. 22432, 2009-Ohio-293.

2009-0456. Myrick v. Cincinnati.

Hamilton App. No. C-080119, 2008-Ohio-6830. Discretionary appeal not accepted. Motion to dismiss denied as moot.

O'Donnell, J., dissents.

2009-0462. State v. McClendon.

Delaware App. No. 08-CAA-12-077.

2009-0463. State v. Cleveland.

Lorain App. No. 08CA009406, 2009-Ohio-397.

2009-0470. State v. Ector.

Lucas App. No. L-07-1169, 2009-Ohio-515.

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

2009-0472. State v. Martin.
Hamilton App. No. C-080215.

2009-0473. State v. Ayers.
Erie App. No. E-07-072, 2009-Ohio-393.

Moyer, C.J., and Stratton and O'Donnell, JJ., dissent and would accept the appeal and hold the cause for the decision in 2008-1255, *State v. Singleton*, Cuyahoga App. No. 90042, 2008-Ohio-2351.

2009-0474. State v. Hollis.
Wyandot App. No. 16-08-10, 2009-Ohio-302.

2009-0479. State v. Nickelson.
Wood App. No. WD-09-002. Discretionary appeal not accepted. Motion for stay of jurisdictional consideration denied as moot.

2009-0482. Fraher Transit, Inc. v. Aldi, Inc.
Summit App. No. 24133, 2009-Ohio-336.

2009-0483. State v. Suffel.
Williams App. No. WM-08-023.

2009-0486. Massey v. Ohio Bur. of Workers' Comp.
Hamilton App. No. C-081017.

2009-0491. Doe v. Barlock.
Cuyahoga App. Nos. 91698 and 91706.

2009-0492. McFadden v. Cleveland State Univ.
Franklin App. No. 06AP-638, 2009-Ohio-362.

2009-0497. State v. Hernandez.
Lucas App. No. L-06-1388, 2009-Ohio-386.

2009-0501. State v. Holloway.
Cuyahoga App. No. 91005, 2009-Ohio-35.

2009-0506. Hall-Davis v. Honeywell, Inc.
Champaign App. No. 2008 CA 1, 2009-Ohio-531.

2009-0507. Hall-Davis v. Honeywell, Inc.
Champaign App. No. 2008 CA 2, 2009-Ohio-531.

2009-0509. Adams v. Honda Eng. of N. Am., Inc.
Union App. No. 14-08-42.

2009-0514. State v. Kalman.
Cuyahoga App. No. 90752, 2009-Ohio-222.

2009-0521. State ex rel. Ormond v. Solon.
Cuyahoga App. No. 91625, 2009-Ohio-1097.

2009-0525. State v. Oliver.
Cuyahoga App. No. 90880, 2009-Ohio-228.

2009-0527. State v. Henry.
Preble App. No. CA2008-04-006, 2009-Ohio-434.

2009-0528. Young v. Leslie.
Wayne App. No. 08CA0015, 2009-Ohio-396.
Pfeifer, J., dissents.

2009-0531. Zunshine v. Cott.
Franklin App. No. 08AP-347, 2009-Ohio-439. Discretionary appeal not accepted.
Motion for leave to exceed page limit denied as moot.
O'Donnell, J., dissents.

2009-0540. Mark v. Long.
Ross App. No. 07CA2981, 2009-Ohio-581.

2009-0543. Adkinson v. Southtown Heating & Cooling, Inc.
Montgomery App. No. 22668, 2009-Ohio-527.

2009-0544. State v. Zimmer.
Cuyahoga App. No. 90846, 2008-Ohio-6953.

2009-0548. State v. Crotts.
Cuyahoga App. No. 90898, 2009-Ohio-138.

2009-0550. Hudson Presbyterian Church v. Eastminster Presbytery.

Summit App. No. 24279, 2009-Ohio-446. Discretionary appeal not accepted.

Lundberg Stratton, J., dissents.

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

Motion for admission pro hac vice of Douglas E. Lumish by Kristi Kress Wilhelmy granted.

2009-0554. State v. Abdul-Shabazz.

Cuyahoga App. No. 90789, 2009-Ohio-225.

2009-0557. Adkins v. Estate of Place.

Clark App. No. 08-CA-73, 2009-Ohio-526.

Lundberg Stratton, J., not participating.

2009-0559. State v. Salahuddin.

Cuyahoga App. No. 90874, 2009-Ohio-466.

2009-0562. State v. Foster.

Cuyahoga App. No. 90870, 2009-Ohio-31.

2009-0567. State v. Pleasant.

Franklin App. No. 08AP-558, 2009-Ohio-579.

2009-0573. State v. Craft.

Butler App. No. CA2008-01-023, 2009-Ohio-675. Discretionary appeal not accepted. Motion for order to transmit certified court of appeals decision and opinion denied as moot.

2009-0575. State v. Sadowsky.

Cuyahoga App. Nos. 90696 and 91796, 2009-Ohio-341.

2009-0582. State v. Silva.

Franklin App. No. 07AP-986, 2009-Ohio-699.

2009-0587. State v. Semenchuck.

Cuyahoga App. No. 90854, 2009-Ohio-465.

2009-0598. State v. Hayes.

Hamilton App. No. C-080377.

2009-0601. State v. Jones.

Wayne App. No. 08CA0033, 2009-Ohio-670.

2009-0611. State v. Hall.

Cuyahoga App. No. 90366, 2009-Ohio-462.

2009-0612. State v. Hall.

Cuyahoga App. No. 90365, 2009-Ohio-461.

2009-0613. State v. Brzyscz.

Ashtabula App. No. 2008-A-0046, 2009-Ohio-680.

2009-0615. State v. Ball.

Ashtabula App. No. 2008-A-0054, 2009-Ohio-999.

2009-0616. In re Hollobaugh.

Mahoning App. No. 08 MA 22, 2009-Ohio-797.

2009-0620. State v. Anderson.

Summit App. No. 24304, 2009-Ohio-837.

2009-0622. State v. Taylor.

Montgomery App. No. 22564, 2009-Ohio-806.

2009-0636. State v. Cook.

Butler App. No. CA2007-01-005.

2009-0701. State v. Bailey.

Hamilton App. Nos. C-070424 and C-070425.

2009-0741. State v. Urbina.

Defiance App. No. 4-06-33, 2007-Ohio-3131.

2009-0779. In re Adoption of Potts.

Hamilton App. No. C-080689, 2009-Ohio-1270.

RECONSIDERATION OF PRIOR DECISIONS

2008-2389. State v. Aleshire.

Licking App. No. 2007-CA-1, 2008-Ohio-5688. Reported at 121 Ohio St.3d 1450, 2009-Ohio-1820, 904 N.E.2d 900. On motion for reconsideration. Motion denied.

2009-0020. State v. Nelson.

Cuyahoga App. No. 90827, 2008-Ohio-5735. Reported at 121 Ohio St.3d 1450, 2009-Ohio-1820, 904 N.E.2d 900. On motion for reconsideration. Motion denied.

2009-0043. State v. Mangus.

Columbiana App. No. 07 CO 36, 2008-Ohio-6210. Reported at 121 Ohio St.3d 1450, 2009-Ohio-1820, 904 N.E.2d 900. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

2009-0062. Klayman v. Luck.

Cuyahoga App. No. 91298, 2008-Ohio-5876. Reported at 121 Ohio St.3d 1451, 2009-Ohio-1820, 904 N.E.2d 901. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

2009-0073. Martin v. McKnight.

Franklin App. No. 08AP-633, 2008-Ohio-6914. Reported at 121 Ohio St.3d 1451, 2009-Ohio-1820, 904 N.E.2d 901. On motion for reconsideration. Motion denied.

2009-0226. Martin v. Woods.

Marion App. No. 9-08-56. Reported at 121 Ohio St.3d 609, 2009-Ohio-1928, ___ N.E.2d ___. On motion for reconsideration. Motion denied.