

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

June 3, 2009

[Cite as *06/03/2009 Case Announcements*, 2009-Ohio-2511.]

MERIT DECISIONS WITH OPINIONS

2007-1222 and 2007-1370. Lang v. Holly Hill Motel, Inc. Slip Opinion No. 2009-Ohio-2495.

Jackson App. No. 06CA18, 2007-Ohio-3898. Certified question answered in the negative and judgment affirmed.

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

O'Connor and Lanzinger, JJ., concur in judgment only.

Pfeifer, J., dissents.

2008-0598. Med. Mut. of Ohio v. Schlotterer, Slip Opinion No. 2009-Ohio-2496.

Cuyahoga App. No. 89388, 2008-Ohio-49. Judgment reversed, and cause remanded to the trial court.

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

Pfeifer, J., concurs in part and dissents in part.

2008-1231. Target Corp. v. Greene Cty. Bd. of Revision, Slip Opinion No. 2009-Ohio-2492.

Board of Tax Appeals, No. 2006-V-751. Decision affirmed.

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

Pfeifer and Lundberg Stratton, JJ., dissent.

MERIT DECISIONS WITHOUT OPINIONS

2009-0453. [State ex rel.] Thomas v. Clark.

In Mandamus. On respondent's answer and 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.

2009-0498. [State ex rel.] Fitzpatrick v. O'Connell.

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.

2009-0533. State ex rel. Hudia v. Ohio Dept. of Rehab. & Corr.

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.

2009-0538. State ex rel. Smith v. Lumpkin.

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.

2009-0565. [State ex rel.] Grundstein v. Court of Appeals, Eighth Appellate Dist.

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

Request for oral hearing denied as moot. Motion to declare relator a vexatious litigator under S.Ct.Prac.R. XIV(5)(B) granted.

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

2009-0566. [State ex rel.] 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, and Lanzinger, JJ., concur.

Cupp, J., dissents and would refer the matter to mediation.

2009-0603. State ex rel. Moton v. Richland Cty. Clerk of Courts.

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.

2009-0625. State ex rel. Taylor v. Wolaver.

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.

2009-0653. Perdue v. Kelly.

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

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

2009-0682. Perry v. Collins.

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

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

2009-0718. Black v. Voorhies.

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

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

MOTION AND PROCEDURAL RULINGS

1990-0291. State v. Durr.

Cuyahoga App. No. 57140. 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 Tuesday, November 10, 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 Cuyahoga County.

1996-0423. State v. Biros.

Trumbull App. No. 91-T-4632. 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 Tuesday, December 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 Trumbull County.

2001-1518. State v. Gapen.

Montgomery C.P. No. 2000 CR 02945. On application for reopening under S.Ct.Prac.R. XI(6). Application denied because appellant failed to comply with the 90-day filing deadline in S.Ct.Prac.R. XI(6)(A).

Lanzinger, J., dissents.

2005-2264. State v. Diar.

Lorain C.P. No. 04CR065248. On application for reopening under S.Ct.Prac.R. XI(6). Application denied.

2008-0991 and 2008-0992. Chojnacki v. Cordray.

Warren App. No. CA2008-03-040. On joint motion to schedule oral argument on the same day as 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234, and 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387. Motion granted.

Pfeifer, J., dissents.

2008-1624. In re Smith.

Allen App. No. 1-07-58, 2008-Ohio-3234. On motion for admission pro hac vice of David M. Lieberman by Benjamin C. Mizer. Motion granted.

2008-2018. Ohio Grocers Assn. v. Levin.

Franklin App. No. 07AP-813, 178 Ohio App.3d 145, 2008-Ohio-4420. On motions for admission pro hac vice of Sheldon H. Laskin and Shirley K. Sicilian by Elisabeth A. Long. Motions granted.

2009-0128. Cyperski v. Smith.

Stark App. No. 2008CA00271. On motion for clarification and motion to strike motion for clarification. Motion for clarification denied. Motion to strike motion for clarification denied as moot.

2009-0406. State ex rel. Mager v. State Teachers Retirement Sys. of Ohio.

In Mandamus. On respondent's answer and motion for judgment on the pleadings.

Sua sponte, an 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 a brief within 10 days of the filing of the evidence; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within seven days after filing of respondent's brief.

Motions for admission pro hac vice of Jeffrey A. Blau and Roger Breit by Kenneth Boukis granted.

2009-0578. State v. Smith.

Montgomery App. Nos. 21463 and 22334, 2008-Ohio-6330. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2008-1725, *State v. Lester*, Hamilton App. No. C-070383, 2008-Ohio-3570; cause consolidated with 2009-0076, *State v. Smith*, Montgomery App. Nos. 21463 and 22334, 2008-Ohio-6330; and briefing schedule stayed.

O'Donnell, J., dissents.

2009-0583. State v. Carpenter.

Columbiana App. No. 08 CO 38. On motion for leave to file delayed appeal. Motion denied.

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

2009-0584. State v. Pemberton.

Lorain App. No. 05CA008660, 2005-Ohio-4659. On motion for leave to file delayed appeal. Motion denied.

2009-0588. State v. Smith.

Trumbull App. No. 2008-T-0023, 2008-Ohio-6998. On motion for leave to file delayed appeal. Motion granted.

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

2009-0609. Cordray v. Am. Booksellers Found. for Free Expression.

Certified Question of State Law, United States Court of Appeals for the Sixth Circuit, Nos. 07-4375 and 07-4376. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following questions:

1. “Is the Attorney General correct in construing R.C. 2907.31(D) to limit the scope of R.C. 2907.31(A), as applied to electronic communications, to personally directed devices such as instant messaging, person-to-person e-mails, and private chat rooms?”

2. “Is the Attorney General correct in construing R.C. 2907.31(D) to exempt from liability material posted on generally accessible websites and in public chat rooms?”

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

2009-0617. State v. Williams.

Franklin App. No. 02AP-35, 2002-Ohio-4503. On motion for leave to file delayed appeal. Motion denied.

2009-0618. State v. Addison.

Cuyahoga App. No. 90642, 2009-Ohio-221. On motion for leave to file delayed appeal. Motion granted.

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

2009-0621. State v. Rippey.

Franklin App. No. 08AP-986. On motion for leave to file delayed appeal. Motion denied.

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

2009-0629. State v. Loveless.

Jefferson App. Nos. 07JE20, 2008-Ohio-3243, and 05JE60, 2007-Ohio-1560. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-0649. Bergman v. Monarch Constr. Co.

Butler App. No. CA2008-02-044, 2009-Ohio-551. 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’ Entry filed March 31, 2009:

“Is the 25% penalty set forth in R.C. 4115.10(A) a mandatory penalty that must be enforced against a party that violates prevailing wage statutes if the violation is not the result of statutory misinterpretation or payroll error?”

Lundberg Stratton, J., dissents.

The conflict case is *IBEW Local Union No. 8 v. Stollsteimer Elec., Inc.*, 168 Ohio App.3d 238, 2006-Ohio-3865.

Sua sponte, cause consolidated with 2009-0558, *Bergman v. Monarch Constr. Co.*, Butler App. No. CA2008-02-044, 2009-Ohio-551.

2009-0665. State v. Moore.

Lake App. No. 2007-L-196, 2008-Ohio-5941. On motion for leave to file delayed appeal. Motion denied.

2009-0666. State v. Otto.

Medina App. No. 07CA0038-M, 2008-Ohio-1003. On motion for leave to file delayed appeal. Motion denied.

2009-0673. State v. Brodbeck.

Franklin App. No. 08AP-134, 2008-Ohio-6961. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-0683. In re Guardianship of Hards.

Lake App. No. 2007-L-150, 2009-Ohio-1002. On appellants' motion to stay trial court judgment and appellee's motion to set bond as to appellant Adams only. Motion to require bond as to appellant Adams is granted. Motion to stay trial court judgment is granted as to appellant Flaherty and is granted as to appellant Adams subject to the posting of bond of \$64,000 with the Lake County Probate Court.

Lanzinger, J., dissents as to the requirement of bond for appellant Adams.

Moyer, C.J., and Pfeifer, J., dissent and would deny the motion for stay.

2009-0686. State v. Shinkle.

Ross App. No. 08CA3049, 2009-Ohio-885. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton and Lanzinger, JJ., dissents.

2009-0688. State v. Whiteside.

Franklin App. No. 07AP-951, 2008-Ohio-3951. On motion for leave to file delayed appeal. Motion denied.

2009-0689. State v. Jones.

Stark App. No. 2007CA00276, 2008-Ohio-5085. On motion for leave to file delayed appeal. Motion denied.

2009-0706. State v. Straughter.

Franklin App. No. 08AP-777, 2009-Ohio-641. On motion for leave to file delayed appeal. Motion denied.

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

2009-0713. State v. Heyne.

Warren App. No. CA2008-05-068. On motion for leave to file delayed appeal. Motion granted.

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

2009-0722. State v. Hoffmeyer.

Summit App. No. 23712, 2008-Ohio-2311. On motion for leave to file delayed appeal. Motion denied.

O'Donnell, J., dissents.

2009-0734. State v. Cline.

Champaign App. No. 07CA02, 2008-Ohio-1866. On motion for leave to file delayed appeal. Motion denied.

2009-0743. State v. Tucker.

Montgomery App. No. 22385, 2008-Ohio-4931. On motion for leave to file delayed appeal. Motion denied.

2009-0745. State v. Coburn.

Ross App. No. 08CA3062, 2009-Ohio-632. On motion for leave to file delayed appeal. Motion denied.

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

2009-0747. State v. Bradley.

Cuyahoga App. No. 90281, 2009-Ohio-460. On motion for stay of trial court proceedings. Motion granted.

O'Donnell, J., dissents.

2009-0828. Westbrook v. Swiatek.

Delaware App. Nos. 08 CAE 12 0078 and 08 CAE 12 0079. On motion for stay of trial court proceedings. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2009-0076. State v. Smith.

Montgomery App. Nos. 21463 and 22334, 2008-Ohio-6330. Discretionary appeal accepted on Proposition of Law No. IV; cause held for the decision in 2008-1725, *State v. Lester*, Hamilton App. No. C-070383, 2008-Ohio-3570; cause consolidated with 2009-0578, *State v. Smith*, Montgomery App. Nos. 21463 and 22334, 2008-Ohio-6330; and briefing schedule stayed.

Pfeifer, J., would also accept the appeal on all other Propositions of Law.
O'Donnell, J., dissents.

2009-0121. In re Guardianship of Spangler.

Geauga App. Nos. 2007-G-2800 and 2007-G-2802, 2008-Ohio-6978.

Pfeifer and O'Donnell, JJ., dissent.

2009-0224. In re L.F.

Stark App. No. 2007-CA-00333, 2008-Ohio-6669. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234; and briefing schedule stayed.

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

2009-0239. State v. Jackson.

Lucas App. No. L-07-1281, 2008-Ohio-6805. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2008-1725, *State v. Lester*, Hamilton App. No. C-070383, 2008-Ohio-3570; and briefing schedule stayed.

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

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

2009-0273. State v. Mentser.

Warren App. Nos. CA2008-06-075 and CA2008-06-076. Discretionary appeal accepted on Proposition of Law Nos. I, II, and IV; 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.

Pfeifer, J., would also accept the appeal on Proposition of Law Nos. III and V.

Lundberg Stratton, J., would also accept the appeal on Proposition of Law No. III.

Lanzinger and Cupp, JJ., would also accept the appeal on Proposition of Law No. V.

2009-0290. State v. Antenori.

Cuyahoga App. No. 90580, 2008-Ohio-5987. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2008-2133 and 2008-2228, *State v. Underwood*, Montgomery App. No. 22454, 2008-Ohio-4748; and briefing schedule stayed.

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

O'Donnell and Cupp, JJ., dissent.

2009-0305. Banford v. Aldrich Chem. Co., Inc.

Montgomery App. No. 22600, 180 Ohio App.3d 107, 2008-Ohio-6837. Discretionary appeal accepted.

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

Pfeifer, J., dissents.

Motion for admission pro hac vice of Gordon L. Ankney by Martin A. Foos granted.

2009-0325. Neal-Pettit v. Lahman.

Cuyahoga App. No. 91551, 2008-Ohio-6653.

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

2009-0330. State v. Speer.

Ottawa App. No. OT-07-046, 180 Ohio App.3d 230, 2008-Ohio-6947. Discretionary appeal accepted.

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

Motions for admission pro hac vice of Marc P. Charmatz, Michael S. Stein, Rosaline Crawford, and Barbara Raimondo by Jane P. Perry granted.

2009-0355. State v. Randlett.

Ross App. No. 08CA3046, 2009-Ohio-112. 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.

2009-0358. In re S.R.P.

Preble App. No. CA2007-11-027, 2009-Ohio-11. Discretionary appeal accepted; cause held for the decision in 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234; and briefing schedule stayed.

2009-0362. State v. Lucas.

Stark App. No. 2007CA00292, 2009-Ohio-19. 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, O'Connor, and O'Donnell, JJ., dissent.

2009-0364. State v. Jones.

Montgomery App. No. 22558, 2009-Ohio-61.

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

2009-0427. State v. Ellis.

Cuyahoga App. No. 90844, 2008-Ohio-6283. 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.

2009-0446. State v. Messer.

Ross App. No. 08CA3050, 2009-Ohio-312. Discretionary appeal accepted; cause held for the decisions in 2008-0991 and 2008-0992, *Chojnacki v. Cordray*, Warren App. No. CA2008-03-040, and 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.

2009-0448. State v. Linville.

Ross App. No. 08CA3051, 2009-Ohio-313. Discretionary appeal accepted; cause held for the decisions in 2008-0991 and 2008-0992, *Chojnacki v. Cordray*, Warren App. No. CA2008-03-040, and 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.

2009-0454. State v. Fisher.

Summit App. No. 24116, 2009-Ohio-332. Discretionary appeal accepted on Proposition of Law No. IV; 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.

Pfeifer, J., dissents.

2009-0488. State v. Sewell.

Ross App. No. 08CA3042, 2009-Ohio-594. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

Pfeifer and O'Donnell, JJ., dissent.

Motion to exceed page limitation denied. Pages in excess of 15 in the memorandum in support of jurisdiction are stricken.

2009-0558. Bergman v. Monarch Constr. Co.

Butler App. No. CA2008-02-044, 2009-Ohio-551. Discretionary appeal accepted on Proposition of Law Nos. I, II, and III and cause consolidated with 2009-0649, *Bergman v. Monarch Constr. Co.*, Butler App. No. CA2008-02-044, 2009-Ohio-551.

Moyer, C.J., and Pfeifer and O'Donnell, JJ., would also accept the appeal on Proposition of Law No. IV.

O'Connor and Cupp, JJ., would not accept the appeal on Proposition of Law No. I.

Lundberg Stratton, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2008-2388. State v. Keahey.

Lucas App. No. L-07-1029, 2008-Ohio-5136.

2008-2417. State v. Skorvanek.

Lorain App. No. 07CA009229, 2008-Ohio-4937.

2008-2505. In re Estate of Keytack.

Trumbull App. No. 2008-T-0039, 2008-Ohio-6563. Discretionary appeal not accepted. Motion to supplement record denied as moot.

2009-0096. State v. Hennis.

Clark App. No. 2007 CA 128, 2008-Ohio-5645.

2009-0133. HCMC, Inc. v. Ohio Dept. of Job & Family Servs.

Franklin App. No. 08AP-144, 179 Ohio App.3d 707, 2008-Ohio-6223. Discretionary appeal and cross-appeal not accepted.

Pfeifer, J., dissents.

2009-0210. State v. Myers.

Hamilton App. No. C-070778.

2009-0214. Zambory v. DeFranco.

Geauga App. No. 2008-G-2820, 2008-Ohio-6556.

O'Donnell, J., dissents.

2009-0215. State v. Carter.

Jefferson App. No. 07-JE-32, 2008-Ohio-6594.

2009-0216. State v. Younker.

Highland App. No. 07CA18, 2008-Ohio-6889.

2009-0218. State v. Robinson.

Jefferson App. No. 07-JE-33.

Pfeifer, J., dissents.

2009-0225. State v. Wagner.

Licking App. No. 2008CA00021, 2008-Ohio-6667.

2009-0227. Sain v. Estate of Haas.

Franklin App. Nos. 08AP-297 and 08AP-399.

2009-0237. In re Slayman.

Licking App. No. 08CA70, 2008-Ohio-6713.

2009-0238. State v. Snyder.

Licking App. No. 2008-CA-25, 2008-Ohio-6709.

2009-0240. Gaines v. Summit Cty. Children Servs.

Summit App. No. 24493.

2009-0252. State v. Kirk.

Butler App. No. CA2008-01-014.

2009-0254. Hydrofarm, Inc. v. Orendorff.

Franklin App. No. 08AP-287, 2008-Ohio-6819.

Moyer, C.J., dissents.

2009-0261. Sopko v. Ohio Bur. of Workers' Comp.

Franklin App. No. 08AP-266, 2008-Ohio-6684.

Pfeifer and O'Donnell, JJ., dissent.

2009-0269. Barnett v. Beazer Homes Investments, L.L.C.

Butler App. No. CA2007-11-276. 2008-Ohio-6756.

2009-0272. Congress Lake Club v. Witte.

Stark App. No. 2007CA00191, 2008-Ohio-6799. Discretionary appeal and cross-appeal not accepted.

Moyer, C.J., not participating.

2009-0274. State v. Darrah.

Warren App. No. CA2006-09-109, 2008-Ohio-6762.

2009-0276. State v. Moore.

Allen App. No. 1-08-27, 2008-Ohio-6751.

2009-0278. State v. Isbell.

Shelby App. No. 17-08-08, 2008-Ohio-6753.

2009-0279. Thomas v. Univ. Hosps. of Cleveland.

Cuyahoga App. No. 90550, 2008-Ohio-6471. Discretionary appeal and cross-appeal not accepted.

O'Donnell, J., dissents.

2009-0281. Advantage Bank v. Fox.

Butler App. No. CA2008-08-194.

2009-0283. State v. Lucky.

Delaware App. No. 07CAA040018, 2008-Ohio-331.

2009-0293. State v. Teagarden.

Licking App. No. 08-CA-39, 2008-Ohio-6896.

2009-0294. TP Mechanical Contrs., Inc. v. Franklin Cty. Bd. of Commrs.

Franklin App. No. 08AP-108, 2008-Ohio-6824.

2009-0297. State v. Town.

Trumbull App. No. 2007-T-0120, 2008-Ohio-6878.

Moyer, C.J., and Lundberg Stratton, J., dissent and would accept the appeal and hold the cause for the decision in 2008-0661, *State v. Hunter*, Cuyahoga App. No. 89456, 2008-Ohio-794.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. I and hold the cause for the decision in 2008-0661, *State v. Hunter*.

2009-0298. State v. Johnson.

Lake App. No. 2007-L-195, 2008-Ohio-6980.
Pfeifer and O'Donnell, JJ., dissent.

2009-0301. State v. Thompson.
Washington App. No. 08CA20, 2009-Ohio-200.

2009-0303. State v. Hicks.
Montgomery App. No. 22652, 2008-Ohio-6839.
O'Donnell, J., dissents.

2009-0304. Walker v. Muskingum Watershed Conservancy Dist.
Tuscarawas App. No. 2007 AP 09 0065, 2008-Ohio-6901.
Pfeifer, J., dissents.

2009-0310. State v. Johnson.
Lucas App. Nos. L-07-1193 and L-08-1230, 2009-Ohio-45.

2009-0312. Karnofel v. Beck.
Trumbull App. No. 2008-T-0057, 2008-Ohio-6874.
O'Donnell, J., not participating.

2009-0317. Ferron v. Fifth Third Bank.
Franklin App. No. 08AP-473, 2008-Ohio-6967.

2009-0322. Montgomery Towne Homeowners Assn., Inc. v. Greene.
Hamilton App. No. C-070568, 2008-Ohio-6905.
O'Donnell, J., dissents.

2009-0323. Riek v. Monastra.
Cuyahoga App. No. 91024, 2008-Ohio-6650.

2009-0326. In re Kovacic.
Lake App. No. 2008-L-101, 2008-Ohio-6882.

2009-0327. Waverly City School Dist. Bd. of Edn. v. Triad Architechs, Inc.
Franklin App. No. 08AP-329, 2008-Ohio-6917.
Pfeifer, J., dissents.

2009-0332. Preston v. All Vinyl Fences & Decks, Inc.
Trumbull App. No. 2008-T-0015, 2008-Ohio-6997.

Pfeifer, J., dissents.

2009-0334. State v. Jones.

Mahoning App. No. 07-MA-200, 2009-Ohio-1500, 2008-Ohio-6971.

Lundberg Stratton and Cupp, JJ., dissent and would accept the appeal and hold the cause for the decision in 2008-1725, *State v. Lester*, Hamilton App. No. C-070383, 2008-Ohio-3570.

2009-0336. Cunningham v. Ohio Dept. of Transp.

Franklin App. No. 08AP-330, 2008-Ohio-6911.

Pfeifer, J., dissents.

2009-0343. Gibson v. Summers.

Portage App. No. 2008-P-0032, 2008-Ohio-6995.

2009-0344. State v. Smith.

Hamilton App. No. C-080132.

2009-0345. State v. Jones.

Portage App. No. 2008-P-0018, 2008-Ohio-6994.

2009-0347. Geiger v. Westfield Natl. Ins. Co.

Hamilton App. No. C-080355, 2008-Ohio-6904. Discretionary appeal not accepted.

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

Motion for admission pro hac vice of M. Austin Mehr by Robert R. Sparks granted.

2009-0348. State v. Kinsey.

Knox App. No. 08 CA 12, 2009-Ohio-23.

2009-0349. State v. Appenzeller.

Lake App. No. 2007-L-175, 2008-Ohio-6982.

2009-0350. State v. Cromartie.

Medina App. No. 07CA0121-M, 2008-Ohio-6931.

2009-0352. Ziss Bros. Constr. Co., Inc. v. Independence Planning Comm.

Cuyahoga App. No. 90993, 2008-Ohio-6850.

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

Pfeifer, J., dissents.

2009-0356. State v. Hunter.

Franklin App. No. 08AP-183, 2008-Ohio-6962.

2009-0357. State v. Hammond.

Jackson App. No. 07CA10, 2009-Ohio-71.

2009-0359. State v. Isreal.

Franklin App. No. 08AP-672.

2009-0360. Williams v. Summit Cty. Fiscal Officer.

Summit App. No. 24363.

2009-0363. State v. Henry.

Preble App. No. CA2008-05-008, 2009-Ohio-10.

2009-0365. Anderson v. Eyman.

Fairfield App. No. 07CA69, 2009-Ohio-102.

2009-0367. Hawkins v. O'Brien.

Montgomery App. No. 22490, 2009-Ohio-60.

Moyer, C.J., dissents.

2009-0368. State v. Loving.

Franklin App. Nos. 08AP-278, 08AP-279, 08AP-280, and 08AP-281, 2009-Ohio-15.

2009-0370. Fifth Third Bank W. Ohio v. Carroll Bldg. Co.

Montgomery App. No. 22361, 2009-Ohio-57.

Pfeifer and Lundberg Stratton, JJ., dissent.

2009-0371. State v. Snyder.

Williams App. No. WM-08-005, 2009-Ohio-50.

2009-0372. State v. Eberhart.

Hamilton App. No. C-070825.

2009-0373. Courtyards of Crystal Lake Homeowners Assn. v. Bradesca.
Cuyahoga App. No. 90966, 2008-Ohio-6157.

2009-0374. State v. Carnes.
Brown App. No. CA2005-01-001, 2006-Ohio-2134.

2009-0375. State v. Zacharias.
Cuyahoga App. No. 90209, 2008-Ohio-6140.
O'Donnell, J., dissents.

2009-0376. Boyd v. Lincoln Electronic Co.
Cuyahoga App. No. 90315, 179 Ohio App.3d 559, 2008-Ohio-6143. Discretionary appeal not accepted. Motion for admission pro hac vice of Stephen J. Harburg, Jessica D. Miller, and Geoffrey M. Wyatt by Susan M. Audey granted.

2009-0379. State v. Snyder.
Williams App. No. WM-08-004, 2009-Ohio-49.

2009-0380. State v. Harding.
Montgomery App. No. 22747, 2009-Ohio-59.
Moyer, C.J., and Lundberg Stratton and Cupp, JJ., dissent.

2009-0384. State v. Day.
Clark App. No. 07-CA-139, 2009-Ohio-56.

2009-0390. Rieger v. Montgomery Cty. Clerk of Courts.
Montgomery App. No. 22575, 2009-Ohio-426.

2009-0392. State v. Johnson.
Stark App. No. 2008CA00110, 2009-Ohio-105.

2009-0395. State v. Hurt.
Scioto App. No. 07CA3176, 2009-Ohio-239.

2009-0396. State v. Ferguson.
Hamilton App. No. C-080338.

2009-0397. State v. McDonald.
Hamilton App. No. C-070861.

2009-0400. State v. Frash.

Franklin App. No. 08AP-870, 2009-Ohio-642.

2009-0403. Kleinfeld v. Huntington Natl. Bank.

Cuyahoga App. No. 90916, 2008-Ohio-6486.

2009-0409. State v. Tyson.

Stark App. No. 2008-CA-00068, 2009-Ohio-104.

Pfeifer, J., dissents.

2009-0411. State v. Doren.

Wood App. No. WD-06-064, 2009-Ohio-167.

Lanzinger, J., dissents.

2009-0412. Wright v. Wright.

Cuyahoga App. No. 91026, 2009-Ohio-128.

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

2009-0416. State v. Jackson.

Ashtabula App. No. 2008-A-0044, 2009-Ohio-288.

2009-0418. State v. Lewis.

Montgomery App. No. 22726, 2009-Ohio-158.

2009-0420. Wehring v. Sipsma.

Sandusky App. No. S-07-023, 2009-Ohio-166.

2009-0425. State v. Conway.

Clark App. No. 2007CA0034, 2008-Ohio-3001.

2009-0434. State v. Tosco.

Marion App. No. 9-08-21, 2009-Ohio-408.

2009-0435. State v. Gover.

Franklin App. No. 08AP-1042.

2009-0438. State v. Pankey.

Mahoning App. No. 09 MA 5.

2009-0443. Natl. City Mtge. Co. v. Wellman.
Pickaway App. No. 08CA13.

2009-0459. State v. Musselman.
Montgomery App. No. 22210, 2009-Ohio-424.

2009-0460. Moeller v. Auglaize Erie Machine Co.
Auglaize App. No. 2-08-10, 2009-Ohio-301.
Pfeifer, J., dissents.

2009-0461. State v. Grice.
Hamilton App. No. C-080420, 2009-Ohio-372.

2009-0471. State v. Gowdy.
Erie App. No. E-06-071, 2009-Ohio-385.

2009-0475. State v. DeNoma.
Hamilton App. No. C-081178.

2009-0476. State v. Sopko.
Cuyahoga App. No. 90743, 2009-Ohio-140.
O'Connor, J., dissents and would accept the appeal on Proposition of Law No. I.

2009-0478. State v. Larkins.
Richland App. Nos. 2007-CA-0092 and 2007-CA-0093, 2008-Ohio-5982.

2009-0489. State v. Ripperger.
Butler App. No. CA2007-11-304, 2009-Ohio-925.

2009-0493. State v. Wilson.
Franklin App. No. 08AP-615, 2009-Ohio-470.

2009-0496. State v. Vega.
Butler App. No. CA2006-08-192, 2007-Ohio-1796.

2009-0499. State v. Smith.
Summit App. No. 24246, 2009-Ohio-335.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal and remand the cause for application of *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

2009-0500. State v. Smith.

Summit App. No. 24247, 2009-Ohio-335.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal and remand the cause for application of *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

2009-0522. State v. Boles.

Lucas App. No. L-07-1255, 2009-Ohio-512.

2009-0529. State v. Henderson.

Ashland App. No. 07COA031, 2008-Ohio-5007.

2009-0534. Long v. Ohio Dept. of Job & Family Servs.

Franklin App. No. 08AP-691, 2009-Ohio-643.

2009-0549. State v. Schandel.

Carroll App. No. 07-CA-848, 2008-Ohio-6359.

2009-0564. State v. Newbern.

Franklin App. No. 08AP-768, 2009-Ohio-816.

2009-0577. State v. Whitaker.

Butler App. No. CA2008-01-034, 2009-Ohio-926.

Pfeifer, J., dissents.

2009-0579. State v. Burton.

Hamilton App. No. C-080173, 2009-Ohio-871.

2009-0589. State v. McCarty.

Butler App. No. CA2008-08-209.

2009-0643. State v. Goff.

Summit App. No. 23292, 2007-Ohio-2735.

2009-0651. State v. Mechler.

Clermont App. No. CA2007-11-110.

2009-0680. In re D.G.

Franklin App. Nos. 08AP-667 and 08AP-706.

2009-0681. State v. Marquez.

Ashtabula App. No. 2007-A-0085, 2008-Ohio-5324.

2009-0707. State v. Phillips.

Summit App. No. 24198, 2008-Ohio-6795.

Lundberg Stratton, J., dissents and would accept the appeal and hold the cause for the decision in 2008-0661, *State v. Hunter*, Cuyahoga App. No. 89456, 2008-Ohio-794.

2009-0748. In re S.D.

Franklin App. No. 08AP-575, 2009-Ohio-1047.

RECONSIDERATION OF PRIOR DECISIONS

2007-1611. State v. Rivas.

Greene App. No. 05-CA-147, 172 Ohio App.3d 473, 2007-Ohio-3593. Reported at ___ Ohio St.3d ___, 2009-Ohio-1354, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

2007-1842. State v. Winn.

Montgomery App. No. 21710, 173 Ohio App.3d 202, 2007-Ohio-4327. Reported at 121 Ohio St.3d 413, 2009-Ohio-1059, 905 N.E.2d 154. On motion for reconsideration. Motion denied.

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

2007-2106 and 2008-0030. Moore v. Lorain Metro. Hous. Auth.

Lorain App. No. 06CA008995, 2007-Ohio-5111. Reported at 121 Ohio St.3d 455, 2009-Ohio-1250, 905 N.E.2d 606. On motion for reconsideration. Motion denied.

O'Donnell and Cupp, JJ., dissent.

2008-0853 and 2008-0858. State v. Derov.

Mahoning App. No. 07 MA 71, 176 Ohio App.3d 43, 2008-Ohio-1672. Reported at 121 Ohio St.3d 269, 2009-Ohio-1111, 903 N.E.2d 636. On motions for clarification and reconsideration. Motions denied.

Pfeifer, J., dissents.

2008-1211. State ex rel. Gill v. School Emps. Retirement Sys.

Franklin App. No. 07AP-286, 2008-Ohio-2302. Reported at ___ Ohio St.3d ___, 2009-Ohio-1358, ___ N.E.2d ___. On motion for reconsideration. Motion denied. Pfeifer, Lundberg Stratton, and O'Donnell, JJ., dissent.

2008-1303. Rzepka v. Solon.

Cuyahoga C.P. No. CV-08-656878. Reported at 121 Ohio St.3d 380, 2009-Ohio-1353, 904 N.E.2d 870. On motion for reconsideration. Motion denied. Pfeifer and O'Donnell, JJ., dissent.

2008-1970. State v. Ingram.

Butler App. No. CA2007-10-247. Reported at 121 Ohio St.3d 1439, 2009-Ohio-1638, 903 N.E.2d 1222. On motion for reconsideration. Motion denied.

2008-2202. State v. Gunner.

Medina App. No. 07CA0074-M, 2008-Ohio-4942. Reported at 121 Ohio St.3d 1425, 2009-Ohio-1296, 903 N.E.2d 325. On motion for reconsideration. Motion denied.

2008-2274. Hai v. Flower Hosp.

Lucas App. No. L-07-1423, 2008-Ohio-5295. Reported at 121 Ohio St.3d 1426, 2009-Ohio-1296, 903 N.E.2d 325. On motion for reconsideration. Motion denied.

2008-2295. State v. Hamilton.

Cuyahoga App. No. 90179, 2008-Ohio-5476. Reported at 121 Ohio St.3d 1439, 2009-Ohio-1638, 903 N.E.2d 1222. On motion for reconsideration. Motion denied.

2008-2337. Bolling v. N. Olmsted City Schools Bd. of Edn.

Cuyahoga App. No. 90669, 2008-Ohio-5347. Reported at 121 Ohio St.3d 1426, 2009-Ohio-1296, 903 N.E.2d 325. On motion for reconsideration. Motion denied. Lundberg Stratton, J., dissents.

2008-2437. State v. Finney.

Fulton App. No. F-07-030, 2008-Ohio-5795. Reported at 121 Ohio St.3d 1440, 2009-Ohio-1638, 903 N.E.2d 1223. On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

2008-2461. State v. Lynch.

Cuyahoga App. No. 90630, 2008-Ohio-5594. Reported at 121 Ohio St.3d 1428, 2009-Ohio-1296, 903 N.E.2d 326. On motion for reconsideration. Motion denied.

Pfeifer, Lundberg Stratton, and O'Connor, JJ., dissent and would grant the motion and remand the cause for a new sentencing hearing.

2009-0053. Stewart v. Rice.

In Quo Warranto. Reported at 121 Ohio St.3d 1421, 2009-Ohio-1296, 903 N.E.2d 322. On objection to entry, considered as a motion for reconsideration. Objection denied.

2009-0385. Hughley v. Saunders.

In Habeas Corpus. Reported at 121 Ohio St.3d 1437, 2009-Ohio-1638, 903 N.E.2d 1221. On motion for reconsideration. Motion denied.

2009-0388. State ex rel. Wenker v. Court of Appeals, Ninth Appellate Dist.

In Prohibition. Reported at 121 Ohio St.3d 1437, 2009-Ohio-1638, 903 N.E.2d 1221. On motion for reconsideration. Motion denied.