

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

November 4, 2009

[Cite as *11/04/2009 Case Announcements, 2009-Ohio-5704.*]

MERIT DECISIONS WITHOUT OPINIONS

2009-1513. State ex rel. Foster v. Smith.

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.

2009-1555. [State ex rel.] Perry v. McKay.

In Procedendo. 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.

2009-1578. State ex rel. Moton v. Richland Cty. Probate Court.

In Mandamus. On motion to dismiss. Motion to dismiss granted. Motion to suppress or strike motion to dismiss denied. Cause dismissed.

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

2009-1681. Ferguson v. Bradshaw.

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

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

MOTION AND PROCEDURAL RULINGS

1986-0642. State v. Beuke.

Hamilton App. No. C-830829. 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, May 13, 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 Hamilton County.

Pfeifer, J., dissents.

1998-0020. State v. Nields.

Hamilton C.P. No. B9703305. 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, June 10, 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 Hamilton County.

Pfeifer, J., dissents.

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

In Mandamus. This cause originated as an original action in mandamus. The court denied the mandamus claim as moot and ordered the parties to submit evidence and briefs on relator's motion for statutory damages and attorney fees. On June 17, 2009, the court awarded relator \$1,000 in statutory damages, \$4,175 in attorney fees, and \$140 in costs.

Upon consideration of relator's motion directing respondent to show cause and to award post-judgment interest and the full amount of attorney fees, including the additional fees incurred in prosecuting the present motion, and respondents' notice of satisfaction,

It is ordered that relator's motion is denied.

2009-0171. State v. Terry.

Darke App. No. 1730, 2008-Ohio-6738. On motions to reinstate appeal and to remand to court of appeals. Motions denied.

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

Cuyahoga App. No. 91404, 2009-Ohio-491. On motion for admission pro hac vice of Mark A. Behrens by Victor E. Schwartz. Motion granted.

2009-0630. State v. Thomas.

Hamilton App. No. C-010724, 2009-Ohio-971. On motion for stay of all lower court proceedings. Motion granted.

Pfeifer, J., dissents.

2009-1591. State v. Majid.

Cuyahoga App. No. 90491, 2009-Ohio-3075. On motion to suspend sentence or grant bail in lieu of appeal. Motion denied.

2009-1613. State v. Wiggins.

Fairfield App. No. 09CA9. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-1619. State v. Ross.

Summit App. No. 21906, 2009-Ohio-3561. On appellant's motion for leave to file delayed appeal and appellee's motion to dismiss the appeal. Motion for leave to file delayed appeal granted. Motion to dismiss denied.

O'Donnell, J., dissents.

O'Connor, J., not participating.

2009-1634. State v. Moats.

Cuyahoga App. No. 91646, 2009-Ohio-3063. On motion for leave to file delayed appeal. Motion granted.

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

2009-1636. State v. Lockhart.

Cuyahoga App. No. 90754, 2009-Ohio-2395. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-1638. State v. Crawford.

Montgomery App. No. 22314, 2008-Ohio-4008. On motion for leave to file delayed appeal. Motion denied.

2009-1692. State v. Crockett.

Mahoning App. No. 07-MA-233, 2009-Ohio-2894. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Lundberg Stratton, and Lanzinger, JJ., dissent.

2009-1697. State v. Ervin.

Cuyahoga App. No. 87333, 2009-Ohio-2574. On motion for leave to file delayed appeal. Motion denied.

2009-1736. State v. Norman.

Cuyahoga App. No. 91302, 2009-Ohio-4044. On motion for stay of court of appeals' judgment. Motion granted.

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

2009-1757. In re Adoption of P.A.C.

Hamilton App. No. C-081149, 2009-Ohio-4492. On motion for stay of court of appeals' decision. Motion granted.

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

APPEALS ACCEPTED FOR REVIEW

2009-1309. State v. Murphy.

Muskingum App. No. CT2008-0067, 2009-Ohio-2690. Discretionary appeal accepted on Proposition of Law No. II; cause held for the decision in 2008-2127 and 2008-2249, *State v. Rohrbaugh*, Logan App. No. 8-07-28, 178 Ohio App.3d 211, 2008-Ohio-4781; and briefing schedule stayed.

Pfeifer and O'Donnell, JJ., dissent.

2009-1321. Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.

Cuyahoga App. No. 92366, 2009-Ohio-2490. Discretionary appeal accepted.

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

Motion for admission pro hac vice of Jeffrey L. Richardson by Hugh D. Berkson granted.

2009-1342. State v. Case.

Huron App. No. H-08-009, 2009-Ohio-2923. Discretionary appeal accepted on Proposition of Law Nos. I-VI; cause held on Proposition of Law No. I for the decision in 2008-0991 and 2008-0992, *Chojnacki v. Cordray*, Warren App. No. CA2008-03-040, and held on Proposition of Law Nos. II-VI 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.

2009-1380. Advantage Bank v. Waldo Pub, L.L.C.

Marion App. No. 9-08-67, 2009-Ohio-2816.

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

2009-1418. Cordray v. Internatl. Preparatory School.

Cuyahoga App. No. 91912, 2009-Ohio-2364.

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

2009-1439. State v. Von Mincy.

Hamilton App. No. C-080369. Discretionary appeal accepted; 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.

Pfeifer, J., dissents.

2009-1467. State v. Maggy.

Trumbull App. No. 2008-T-0078, 2009-Ohio-3180. Discretionary appeal accepted on Proposition of Law No. III; 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 and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. I and II.

2009-1527. State v. Rardon.

Summit App. No. 24478, 2009-Ohio-3361.

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

APPEALS NOT ACCEPTED FOR REVIEW

2009-0618. State v. Addison.

Cuyahoga App. No. 90642, 2009-Ohio-221.

2009-0991. State v. Frazier.

Fairfield App. No. 08CA0066, 2009-Ohio-1899.

2009-1214. Franz v. Martin.

Cuyahoga App. No. 92211, 2009-Ohio-2378.

2009-1216. Kaur v. Bharmota.

Franklin App. No. 08AP-646, 2009-Ohio-2344.

2009-1220. Richardson v. Indus. Comm.

Montgomery App. No. 22797, 2009-Ohio-2548.

2009-1223. Kirk v. Warden.

Ross App. No. 09CA3106.

2009-1225. State v. Millette.

Licking App. No. 08-CA-94, 2009-Ohio-2706.

2009-1237. Joyce v. Godale.

Geauga App. No. 2008-G-2817, 2009-Ohio-2439.

2009-1239. King v. Craig.

Medina App. No. 09CA0003-M. Discretionary appeal not accepted. Motion to dismiss denied as moot.

O'Donnell, J., dissents.

2009-1245. State v. Foster.

Richland App. No. 2009CA0042, 2009-Ohio-3337.

O'Donnell, J., dissents.

2009-1253. Abernathy v. Abernathy.

Cuyahoga App. No. 91735, 2009-Ohio-2263.

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

2009-1276. State v. Wolfe.

Montgomery App. No. 23232, 2009-Ohio-3045.

2009-1297. State v. Gergely.

Paulding App. No. 11-09-04.

2009-1298. State v. White.

Butler App. No. CA2008-02-046, 2009-Ohio-2965.

2009-1303. Rickard v. Trumbull Twp. Zoning Bd. of Appeals.

Ashtabula App. Nos. 2008-A-0024, 2008-A-0025, 2008-A-0026, 2008-A-0027, and 2008-A-0028, 2009-Ohio-2619.

2009-1306. Murphy-Kesling v. Kesling.

Summit App. No. 24176, 2009-Ohio-2560.

2009-1322. Lake Pointe Constr. Co., Inc. v. Avon.

Lorain App. No. 08CA009483, 182 Ohio App.3d 554, 2009-Ohio-2613.

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

2009-1324. Davis v. Cincinnati.

Hamilton App. No. C-080464.

2009-1325. State v. Crossty.

Butler App. No. CA2008-03-070, 2009-Ohio-2800.

2009-1328. State v. Hall.

Warren App. No. CA2008-08-101, 2009-Ohio-2799.

2009-1333. Reighard v. Cleveland Elec. Illuminating Co.

Ashtabula App. No. 2008-A-0063, 2009-Ohio-2621.

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

2009-1337. Luna-Corona v. Esquivel-Parrales.

Butler App. No. CA2008-07-175, 2009-Ohio-2628.

O'Donnell, J., dissents.

2009-1341. Morrow v. Reminger & Reminger Co., L.P.A.

Franklin App. No. 08AP-925, 2009-Ohio-2665. Discretionary appeal not accepted. Motion for admission pro hac vice of Sean M. Hanifin and Steven W. McNutt by W. Frederick Fifner granted.

2009-1343. Faivre v. DEX Corp. Northeast.

Franklin App. No. 08AP-729, 182 Ohio App.3d 563, 2009-Ohio-2660.

2009-1347. State v. Smith.

Hamilton App. No. C-080685.

2009-1351. Cincinnati v. State Emp. Relations Bd.

Hamilton App. No. C-080819, 2009-Ohio-2834.

2009-1355. Toledo v. Colbert.

Lucas App. No. L-08-1209, 2009-Ohio-2766.

2009-1359. Erie Islands Resort & Marina v. Fowler.

Ottawa App. No. OT-08-052, 2009-Ohio-2925.

2009-1366. Alliance Excavating, Inc. v. Triangle Real Estate Servs., Inc.

Franklin App. No. 08AP-535, 2009-Ohio-2761.

2009-1375. State Road Assoc. v. Cuyahoga Falls.

Summit App. No. 24362, 2009-Ohio-2859.

2009-1376. Argo Constr. Co., Inc. v. Kroger Ltd. Partnership I.

Clinton App. No. CA2008-09-038, 2009-Ohio-2811.

2009-1377. State v. Powell.

Lake App. No. 2008-L-116, 2009-Ohio-2821.

2009-1378. State v. Powell.

Lake App. No. 2007-L-187, 2009-Ohio-2822.

2009-1381. Ryder v. McGlone's Rentals.

Crawford App. No. 3-09-02, 2009-Ohio-2820.

Lanzinger, J., dissents.

2009-1385. FirstEnergy Corp. v. Cleveland.

Cuyahoga App. No. 91624, 182 Ohio App.3d 357, 2009-Ohio-2257.

2009-1388. State v. Howard.

Hamilton App. No. C-080565.

2009-1390. State v. Fuller.

Hamilton App. No. C-040318.

2009-1393. State v. Taylor.

Mahoning App. No. 07 MA 115, 2009-Ohio-3334.

2009-1396. Mays v. Cincinnati.

Hamilton App. No. C-080827.
Pfeifer, J., dissents.

2009-1422. Crosby-Edwards v. Morris.
Franklin App. No. 09AP-152, 2009-Ohio-2994.

2009-1424. State v. Steward.
Franklin App. No. 08AP-974, 2009-Ohio-2990.
Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. II.

2009-1426. Zagrans v. Elek.
Lorain App. No. 08CA009472, 2009-Ohio-2942.

2009-1429. Chevy Chase Bank, F.S.B. v. Johnson.
Montgomery App. No. 23185.

2009-1430. State v. Naugle.
Stark App. No. 2008-CA-00190, 182 Ohio App.3d 593, 2009-Ohio-3268.

2009-1431. State v. Timofeev.
Summit App. No. 24222, 2009-Ohio-3007.

2009-1438. State v. Robinson.
Cuyahoga App. No. 92050, 2009-Ohio-3379.
Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. I.

2009-1446. State v. Cody.
Franklin App. No. 07AP-142, 2009-Ohio-3082.

2009-1447. State v. Newell.
Cuyahoga App. No. 92361, 2009-Ohio-3066.

2009-1448. State v. McGeary.
Ross App. No. 08CA3063, 2009-Ohio-3175.

2009-1450. State v. Williams.
Summit App. No. 24169, 2009-Ohio-3162.

2009-1451. Trumbull Mem. Hosp. v. Karnofel.
Trumbull App. No. 2008-T-0115, 2009-Ohio-1488.

2009-1453. State v. Smith.
Cuyahoga App. No. 93527.

2009-1457. McNeil v. MedCentral Health Sys.
Richland App. No. 2008CA0104, 2009-Ohio-3389.

2009-1459. State v. Bevins.
Hamilton App. No. C-081031.

2009-1462. State v. Morris.
Summit App. No. 24613, 2009-Ohio-3183.

2009-1463. State v. Coleman.
Allen App. No. 1-07-82.

2009-1470. State v. Clark.
Mahoning App. No. 08 MA 15, 2009-Ohio-3328.

2009-1474. State v. Hazel.
Franklin App. Nos. 08AP-1002 and 08AP-1003, 2009-Ohio-2144.

2009-1477. State v. Porterfield.
Trumbull App. No. 2008-T-0002.

2009-1489. State v. Hunter.
Hamilton App. No. C-080730, 2009-Ohio-3259.

2009-1496. State v. Napper.
Ross App. No.08CA3081, 2009-Ohio-3922.

2009-1499. State v. Johnson.
Cuyahoga App. No. 91567, 2009-Ohio-3088.

2009-1503. State v. Gault.
Fayette App. No. CA2008-07-025.

2009-1521. State v. Price.

Cuyahoga App. No. 90308, 2009-Ohio-3503.

2009-1524. State v. Crawford.

Richland App. No. 07-CA-116. Discretionary appeal not accepted. Motion for sanctions denied.

2009-1526. State v. Rhoten.

Summit App. No. 24487, 2009-Ohio-3362.

2009-1560. State v. Davis.

Washington App. No. 06CA39.

2009-1565. State v. Craft.

Butler App. No. CA2008-01-023.
Lanzinger, J., dissents.

2009-1568. State v. Edwards.

Lucas App. No. L-06-1345.

2009-1651. In re Adoption of Kat.P.

Fairfield App. Nos. 09CA10 and 09CA11, 2009-Ohio-3852.

2009-1677. In re C.C.

Butler App. No. CA2009-01-030.

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

RECONSIDERATION OF PRIOR DECISIONS

2007-0818. State v. Bankhead.

Hamilton App. No. C-060480, 2007-Ohio-1314. Reported at ___ Ohio St.3d ___, 2009-Ohio-4303, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

2008-0845. Allen v. totes/Isotoner Corp.

Butler App. No. CA2007-08-196. Reported at ___ Ohio St.3d ___, 2009-Ohio-4231, ___ N.E.2d ___. On motion for reconsideration. Motion denied.
Pfeifer and O'Connor, JJ., dissent.

2008-2471. State ex rel. Doe v. Smith.

Clermont App. No. CA2008-01-006. Reported at 123 Ohio St.3d 44, 2009-Ohio-4149, 914 N.E.2d 159. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

2009-0523. State ex rel. McKinney v. Defiance Cty. Court of Common Pleas.
Defiance App. No. 4-09-01. Reported at ___ Ohio St.3d ___, 2009-Ohio-4693, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

2009-0727. State ex rel. O'Brien v. Heimlich.
Franklin App. No. 08AP-521, 2009-Ohio-1550. Reported at 122 Ohio St.3d 1502, 2009-Ohio-4233, 912 N.E.2d 107. On motion for reconsideration. Motion denied.
Pfeifer, Lundberg Stratton, and Lanzinger, JJ., dissent.

2009-0821. State v. Gordon.
Franklin App. No. 08AP-791, 2009-Ohio-1330. Reported at 122 Ohio St.3d 1522, 2009-Ohio-4776, 913 N.E.2d 457. On additional memorandum in support treated as a motion for reconsideration. Motion denied.

2009-0934. State v. Caver.
Cuyahoga App. No. 91443, 2009-Ohio-1272. Reported at 122 Ohio St.3d 1499, 2009-Ohio-4233, 912 N.E.2d 104. On motion for reconsideration. Motion denied.

2009-0959. Parker v. Tim Lally Chevrolet.
Cuyahoga App. No. 91674, 2009-Ohio-1614. Reported at 122 Ohio St.3d 1505, 2009-Ohio-4233, 912 N.E.2d 109. On motion for reconsideration. Motion denied.

2009-0996. State v. Mills.
Tuscarawas App. No. 2007 AP 07 0039, 2009-Ohio-1849. Reported at 122 Ohio St.3d 1505, 2009-Ohio-4233, 912 N.E.2d 109. On motion for reconsideration. Motion denied.
Moyer, C.J., and Pfeifer, J., dissent.

2009-1000. State v. Caver.
Cuyahoga App. No. 91443, 2009-Ohio-1272. Reported at 122 Ohio St.3d 1506, 2009-Ohio-4233, 912 N.E.2d 109. On motion for reconsideration. Motion denied.

2009-1007. State v. Searles.
Morgan App. No. 08CA0006, 2009-Ohio-2688. Reported at 122 Ohio St.3d 1506, 2009-Ohio-4233, 912 N.E.2d 109. On motion for reconsideration. Motion denied.

2009-1101. Trumbull Mem. Hosp. v. Karnofel.

Trumbull App. No. 2008-T-0115, 2009-Ohio-1488. Reported at 122 Ohio St.3d 1524, 2009-Ohio-4776, 913 N.E.2d 459. On motion for reconsideration. Motion denied. Motion for leave to proceed denied as moot.

2009-1102. State v. Moore.

Union App. No. 14-08-43, 2009-Ohio-2106. Reported at 122 Ohio St.3d 1524, 2009-Ohio-4776, 913 N.E.2d 459. On motion for reconsideration. Motion denied.

2009-1567. State v. Broom.

Cuyahoga App. No. 91297, 2009-Ohio-3731. Reported at ___ Ohio St.3d ___, 2009-Ohio-4778, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.