

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

May 23, 2012

[Cite as *05/23/2012 Case Announcements*, 2012-Ohio-2263.]

MERIT DECISIONS WITH OPINIONS

2011-0019. Wymyslo v. Bartec, Inc., Slip Opinion No. 2012-Ohio-2187.

Franklin App. No. 10AP-173, 2010-Ohio-5558. Judgment affirmed.

O'Connor, C.J., and Pfeifer, Lundberg Stratton, Lanzinger, Cupp, and McGee Brown, JJ., concur.

O'Donnell, J., concurs in judgment only.

2011-1194. State v. Griffis, Slip Opinion No. 2012-Ohio-2201.

Muskingum App. No. CT2010-57, 2011-Ohio-2955. Appeal dismissed as improvidently accepted.

O'Connor, C.J., and Pfeifer, Lundberg Stratton, O'Donnell, Cupp, and McGee Brown, JJ., concur.

Lanzinger, J., dissents.

2011-1261. State v. Turner, Slip Opinion No. 2012-Ohio-2203.

Cuyahoga App. No. 95438, 2011-Ohio-2785. Appeal dismissed as improvidently accepted.

O'Connor, C.J., and Pfeifer, Lundberg Stratton, O'Donnell, Cupp, and McGee Brown, JJ., concur.

Lanzinger, J., dissents.

MERIT DECISIONS WITHOUT OPINIONS

2011-2061. State ex rel. Davis v. Vincent.

In Mandamus. On motion to dismiss. Motion to dismiss granted. Cause dismissed. Motion to compel relator to separately state and number the complaint denied as moot.

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

2012-0212. State ex rel. Askew v. Stark Cty. Common Pleas Court.

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

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

2012-0501. State ex rel. Simpson v. Cooper.

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

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

2012-0530. Wright v. Allen.

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

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

2012-0558. State v. Berry.

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

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

2012-0572. State ex rel. Black v. Risner.

In Habeas Corpus. On petition for writ of habeas corpus of James D. Black. Motion to dismiss granted. Cause dismissed. Motion to declare petitioner a vexatious litigator denied.

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

2012-0603. Taylor v. Bradshaw.

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

Pfeifer, Acting C.J., and Lundberg Stratton, O'Donnell, Lanzinger, Cupp, and McGee Brown, JJ., concur.

O'Connor, C.J., not participating.

2012-0627. Brandeberry v. Johnson.

In Habeas Corpus. On petition for writ of habeas corpus of Scott O. Brandeberry. Sua sponte, cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

2012-0302. State v. Lalain.

Cuyahoga App. No. 95857, 2011-Ohio-4813. 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 January 23, 2012:

"Whether, despite the defendant's failure to object, it is error for the trial court to order defendant to pay an amount of restitution in the absence of a specific plea agreement and without a hearing or evidence substantiating the economic loss claimed by the plaintiff?"

O'Donnell and Cupp, JJ., dissent.

The conflict case is *State v. Ratliff*, 194 Ohio App.3d 202, 2011-Ohio-2313, 955 N.E.2d 425 (2d Dist.).

2012-0375. State v. Smith.

Cuyahoga App. Nos. 96582, 96622, and 96623, 2012-Ohio-261. On review of order certifying a conflict. The court determines that a conflict exists. Cause held for the decision in 2011-1553, *State v. Grunden*, Cuyahoga App. No. 95909, 2011-Ohio-3687; cause consolidated with 2012-0381, *State v. Smith*, Cuyahoga App. Nos. 96582, 96622, and 96623, 2012-Ohio-261; and briefing schedule stayed.

2012-0416. State v. Forrest.

Franklin App. No. 11AP-291, 2012-Ohio-280 and 2012-Ohio-938. On review of order certifying a conflict. 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 8, 2012:

“Whether the entire en banc court as defined in App.R. 26(A)(2) must participate in the decision whether to grant or deny an application for en banc consideration.”

Lanzinger and O’Donnell, JJ., dissent.

The conflict cases are *Kelley v. Farraro*, Cuyahoga App. No. 92446, 2010-Ohio-4179, and *State v. Morris*, Medina App. No. 09CA0022-M, 2010-Ohio-5973.

Cause consolidated with 2012-0415, *State v. Forrest*, Franklin App. No. 11AP-291, 2012-Ohio-280.

2012-0095. Lenard v. Ohio Adult Parole Auth.

In Mandamus. On motion for decision. Motion denied.

2012-0492. State v. Gatt.

Medina App. No. 10CA0108-M, 2011-Ohio-5221. On motion for leave to file delayed appeal. Motion denied.

2012-0543. State v. Thompson.

Madison App. No. CA2012-01-004. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cupp, JJ., dissent.

2012-0548. State v. Cardamone.

Cuyahoga App. No. 96876, 2012-Ohio-270. On motion for leave to file delayed appeal. Motion granted.

O’Connor, C.J., and Lundberg Stratton and McGee Brown, JJ., dissent.

2012-0557. State v. Irvin.

Ross App. No. 08CA3056, 2009-Ohio-4181. On motion for leave to file delayed appeal. Motion denied.

2012-0576. State v. Nunez.

Cuyahoga App. No. 93971, 2010-Ohio-5589. On motion for leave to file delayed appeal. Motion denied.

2012-0577. State v. Nunez.

Cuyahoga App. No. 96567. On motion for leave to file delayed appeal. Motion denied.

2012-0582. State v. Hall.

Cuyahoga App. No. 96680, 2012-Ohio-266. On motion for leave to file delayed appeal. Motion granted.

O'Connor, C.J., dissents.

2012-0591. State v. Jones.

Hamilton App. No. C-110059, 2011-Ohio-6633. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2012-0595. State v. Turner.

Stark App. No. 2011-CA-00137, 2012-Ohio-345. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cupp, JJ., dissent.

2012-0602. State v. Taylor.

Summit App. No. 25490, 2011-Ohio-5009. On motion for leave to file delayed appeal. Motion denied.

O'Connor, C.J., not participating.

2012-0614. State v. Butler.

Lucas App. No. L-08-1390, 2010-Ohio-178. On motion for leave to file delayed appeal. Motion denied.

2012-0669. Everbank Mtge. Co. v. Sparks.

Warren App. No. CA2011-03-021, 2012-Ohio-886. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2012-0058. Marusa v. Erie Ins. Co.

Cuyahoga App. No. 96556, 2011-Ohio-6276. Discretionary appeal accepted.

O'Donnell, J., dissents.

Motion to dismiss denied.

2012-0328. State v. Williams.

Montgomery App. No. 24452, 2012-Ohio-107. Discretionary appeal accepted; cause held for the decision in 2011-1066, *State v. Brunning*, Cuyahoga App. No. 95376, 2011-Ohio-1936; and briefing schedule stayed.

2012-0346. State v. Cook.

Montgomery App. No. 24611, 2012-Ohio-198. Discretionary appeal accepted; cause held for the decision in 2011-1066, *State v. Brunning*, Cuyahoga App. No. 95376, 2011-Ohio-1936; and briefing schedule stayed.

2012-0381. State v. Smith.

Cuyahoga App. Nos. 96582, 96622, and 96623, 2012-Ohio-261. Discretionary appeal accepted; cause held for the decision in 2011-1553, *State v. Grunden*, Cuyahoga App. No. 95909, 2011-Ohio-3687; cause consolidated with 2012-0375, *State v. Smith*, Cuyahoga App. Nos. 96582, 96622, and 96623, 2012-Ohio-261; and briefing schedule stayed.

O'Connor, C.J., dissents.

2012-0415. State v. Forrest.

Franklin App. No. 11AP-291, 2012-Ohio-280. Discretionary appeal accepted on Proposition of Law V, and cause consolidated with 2012-0416, *State v. Forrest*, Franklin App. No. 11AP-291, 2012-Ohio-280 and 2012-Ohio-938.

Lundberg Stratton, J., would also accept the appeal on Propositions of Law I - IV.

Pfeifer and O'Donnell, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2011-2169. State v. Capell.

Hamilton App. No. C-100798.

2012-0216. State v. Willan.

Summit App. No. 24894, 2011-Ohio-6603. Discretionary appeal and cross-appeal not accepted.

Lundberg Stratton and McGee Brown, JJ., dissent and would accept the cross-appeal.

O'Connor, C.J., not participating.

2012-0293. Waite v. Mahalaxmi, Inc.

Fairfield App. No. 2011-CA-00028, 2012-Ohio-15.

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

2012-0323. State v. Small.

Licking App. No. 10-CA-138, 2012-Ohio-149.

2012-0324. State v. Ashworth.

Champaign App. No. 2011 CA 1, 2012-Ohio-108.

O'Connor, C.J., and Cupp and McGee Brown, JJ., dissent.

2012-0326. Chapman v. Chapman.

Lucas App. No. L-10-1293, 2012-Ohio-126.

O'Donnell, J., dissents.

2012-0327. State v. Hudson.

Cuyahoga App. No. 95892, 2012-Ohio-100.

2012-0331. Rayess v. Educational Comm. for Foreign Med. Graduates.

Montgomery App. No. 24125. Discretionary appeal not accepted. Appellee's motion to dismiss, and appellant's motion to strike the motion to dismiss, conditional motion to invite the U.S. Solicitor to file a jurisdictional memorandum, motion to strike appellee's memorandum in response, motion for sanctions, and second motion for sanctions denied.

2012-0333. Hill v. Stumbo.

Franklin App. No. 11AP-472, 2012-Ohio-65.

2012-0339. State v. Erichsen.

Muskingum App. No. CT2011-0018, 2012-Ohio-137.

2012-0341. Grey v. Walgreen Co.

Cuyahoga App. No. 96846, 2011-Ohio-6167.

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

2012-0342. Lucas v. Perciak.

Cuyahoga App. No. 96962, 2012-Ohio-88.

O'Donnell, J., dissents.

2012-0350. Mickey v. Rokakis.

Cuyahoga App. No. 97053, 2012-Ohio-273.

2012-0356. State v. Mayer.

Mercer App. No. 10-11-18.

2012-0358. Loop v. Plumbers, Pipe Fitters & MES Local Union No. 392.

Hamilton App. No. C-110105.

2012-0359. Lane v. Bur. of Workers' Comp.
Montgomery App. No. 24618, 2012-Ohio-209.

2012-0362. Tutolo v. Young.
Lake App. No. 2010-L-118, 2012-Ohio-121.
O'Donnell, J., dissents.

2012-0363. State v. Jefferson.
Delaware App. No. 11 CAA 04 0033, 2012-Ohio-148. Discretionary appeal not accepted. Motion to stay execution of sentence and for appellate bond denied.
O'Donnell, J., dissents.

2012-0368. State v. Ritchie.
Auglaize App. No. 2-11-17.

2012-0370. State v. Millette.
Licking App. No. 11-CA-23, 2011-Ohio-6357.

2012-0371. State v. Hines.
Montgomery App. No. 24346, 2012-Ohio-207.
O'Connor, C.J., and McGee Brown, J., dissent.
Cupp, J., dissents and would accept the appeal and hold the cause for the decision in 2011-2134, *State v. Gardner*, Montgomery App. No. 24308, 2011-Ohio-5692.

2012-0376. State v. Hatfield.
Cuyahoga App. No. 95647, 2011-Ohio-6620.
Lundberg Stratton, J., dissents.

2012-0379. Sanders v. Gabbard.
Cuyahoga App. No. 96693, 2012-Ohio-176.

2012-0380. In re Guardianship of Smith.
Clark App. No. 2011-CA-09, 2011-Ohio-6496.

2012-0382. Mayfield Hts. v. Brown.
Cuyahoga App. No. 96062, 2012-Ohio-167.

2012-0384. White Oak Property Dev., L.L.C. v. Washington Twp.
Brown App. No. CA2011-05-011, 2012-Ohio-425.
Pfeifer, J., dissents.

2012-0385. State v. Hall.
Cuyahoga App. No. 96680, 2012-Ohio-266.

2012-0393. Van Scyoc v. Desai.
Lucas App. No. L-11-1261.

2012-0397. Gilcreast v. Warden of Marion Corr. Inst.
Marion App. No. 9-12-04.

2012-0398. State v. Montgomery.
Montgomery App. No. 24450, 2012-Ohio-391.

2012-0399. State v. Elkins.
Champaign App. No. 11-CA-31.

2012-0400. Morgan Woods Homeowners' Assn. v. Wills.
Licking App. No. 11 CA 57, 2012-Ohio-233.
O'Donnell, J., dissents.

2012-0408. State v. Lalain.
Cuyahoga App. No. 95857, 2011-Ohio-4813.
Pfeifer, Lanzinger, and McGee Brown, JJ., dissent.

2012-0409. State v. Kovacic.
Lake App. No. 2010-L-065, 2012-Ohio-219.

2012-0410. Westerville v. Taylor.
Franklin App. No. 11AP-880.

2012-0419. Kirshner v. Fannie Mae.
Lucas App. No. L-11-1027, 2012-Ohio-286.

2012-0424. State v. Lindsay.
Richland App. No. 2010-CA-0134.

2012-0431. State v. Boles.

Lucas App. No. L-11-1020, 2012-Ohio-385.

2012-0433. State v. Grenter.

Ashtabula App. No. 2011-A-0071, 2012-Ohio-297. Discretionary appeal not accepted. Motion for injunction to stay and hold in abeyance preserving proceedings pursuant to Civ.R. 65(B)(1) and App.R. 7(A) denied.

2012-0440. Genhart v. David.

Mahoning App. No. 10 MA 144, 2012-Ohio-433.
O'Donnell, J., dissents.

2012-0460. Nelson v. State.

Cuyahoga App. No. 96988, 2012-Ohio-364.
Cupp, J., dissents.

2012-0467. State v. Lusane.

Portage App. No. 2011-P-0040, 2012-Ohio-402.

2012-0479. State v. Gill.

Hamilton App. No. C-110473.

2012-0482. State v. Alexander.

Hamilton App. No. C-110035, 2012-Ohio-460.

2012-0484. State v. Holland.

Stark App. No. 11 CA 00104, 2012-Ohio-486.

2012-0487. Perry v. Ohio Dept. of Rehab. & Corr.

Franklin App. No. 11AP-571, 2012-Ohio-452.

2012-0491. State v. Griffin.

Montgomery App. No. 24001, 2012-Ohio-503.

2012-0493. State v. McGrath.

Cuyahoga App. No. 97207, 2012-Ohio-816.

2012-0504. Telecom Acquisition Corp. I, Inc. v. Lucic Ents., Inc.

Cuyahoga App. No. 95951, 2012-Ohio-472.
Pfeifer, J., dissents.

2012-0507. State v. Clement.

Cuyahoga App. No. 94869, 2012-Ohio-582.

2012-0539. State v. Gooden.

Summit App. No. 24896.

2012-0559. State v. Hendricks.

Summit App. No. 25133.

RECONSIDERATION OF PRIOR DECISIONS

2012-0006. State v. Melton.

Cuyahoga App. No. 96621, 2011-Ohio-5929. Reported at 131 Ohio St.3d 1485, 2012-Ohio-1143, 963 N.E.2d 825. On motion for reconsideration. Motion denied.

O'Connor, C.J., and Cupp and McGee Brown, JJ., dissent and would accept the appeal and hold the cause for the decision in 2011-0818, *State v. Griffin*, Coshocton App. No. 09-CA-21, 2011-Ohio-1638.

2012-0024. State v. Graves.

Lorain App. No. 08CA009397, 2011-Ohio-5997. Reported at 131 Ohio St.3d 1499, 2012-Ohio-1501, 964 N.E.2d 439. On motion for reconsideration. Motion denied.

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

2012-0048. Hoerig v. Tiffin Scenic Studios, Inc.

Seneca App. No. 13-11-18, 2011-Ohio-6103. Reported at 131 Ohio St.3d 1499, 2012-Ohio-1501, 964 N.E.2d 439. On motion for reconsideration. Motion denied.

2012-0055. State v. Blanton.

Ottawa App. No. OT-11-030. Reported at 131 Ohio St.3d 1499, 2012-Ohio-1501, 964 N.E.2d 439. On motion for reconsideration. Motion denied.

2012-0070. Healthy Families Ohio, Inc. v. Ohio Ballot Bd.

In Mandamus and Prohibition. Reported at 131 Ohio St.3d 1481, 2012-Ohio-1143, 963 N.E.2d 822. On motion for reconsideration. Motion denied.