

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 25, 2019

[Cite as *09/25/2019 Case Announcements*, 2019-Ohio-3797.]

MERIT DECISIONS WITH OPINIONS

2019-0212. Toledo Bar Assn. v. Manore, Slip Opinion No. 2019-Ohio-3846.

On Certified Report by the Board of Professional Conduct, No. 2018-035. John James Manore III, of Sylvania, Ohio, suspended from the practice of law for two years with the second year stayed on conditions and credit for time served under interim felony suspension.

French, Donnelly, and Stewart, JJ., concur.

O'Connor, C.J., and Fischer, J., concur but would not grant credit for time served under interim felony suspension.

Kennedy, J., concurs in part and dissents in part, with an opinion joined by DeWine, J.

2019-0280. State ex rel. Alford v. Toledo Corr. Inst., Slip Opinion No. 2019-Ohio-3847.

Lucas App. No. L-18-1133, 2019-Ohio-294. Judgment affirmed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

MERIT DECISIONS WITHOUT OPINIONS

2018-1117. State ex rel. Hedenberg v. N. Cent. Corr. Inst.

In Mandamus. On respondents' motion to dismiss. Motion denied. Respondents ordered to provide under seal within ten days for in camera review the documents requested by relator in his complaint.

O'Connor, C.J., and French, Fischer, Donnelly, and Stewart, JJ., concur.

Kennedy and DeWine, JJ., would grant the writ as to the requested logs, e-mails, and maintenance requests that would indicate when the printer was inoperable.

2019-0515. State ex rel. Frank v. Ohio State Univ.

In Mandamus. Sua sponte, alternative writ granted. The following briefing schedule is set for the presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05: The parties shall file any evidence they intend to present within 20 days, relator shall file a brief within 10 days after 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 7 days after the filing of respondent's brief.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0592. State ex rel. Stuart v. Greene.

In Mandamus. Sua sponte, respondent ordered to show cause within five days why he should not be held in contempt. Relator's motion for leave to supplement writ of mandamus granted.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0754. State ex rel. Herrick-Hudson, L.L.C. v. Corrigan.

In Procedendo. On respondent's motion to dismiss. Motion denied. Sua sponte, relator ordered to show cause within 14 days why its complaint should not be dismissed as moot.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0787. State ex rel. Mason v. Cain.

In Mandamus. On S.Ct.Prac.R. 12.04 determination. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0790. Beaver v. Fraser.

In Procedendo. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0795. State ex rel. Small v. Wainwright.

In Mandamus. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0815. State ex rel. White v. Brown.

In Mandamus and Prohibition. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0818. State ex rel. Morris v. Cain.

In Mandamus and Prohibition. On motion to dismiss of respondents Judge David E. Cain and Franklin County Court of Common Pleas. Motion granted. Motion to dismiss of respondent Tenth District Court of Appeals granted. Cause dismissed.

O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

French, J., not participating.

2019-0826. Anderson v. Gaul.

In Mandamus. On respondent's motion to dismiss. Motion granted. Respondent's motion to declare relator a vexatious litigator granted. Relator's motion to disqualify respondent's counsel of record denied. Cause dismissed.

O'Connor, C.J., and Fischer, DeWine, and Stewart, JJ., concur.

Kennedy and French, JJ., would deny the motion to declare relator a vexatious litigator.

Donnelly, J., not participating.

2019-0833. Johnson v. Dankof.

In Procedendo. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0860. State ex rel. Hamilton v. Carr.

In Procedendo. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0877. State ex rel. Russell v. Collier.

In Prohibition. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0878. Copeland v. Coats.

In Mandamus and Prohibition. On relator's motion for injunctive relief. Motion denied. Respondent's motion to dismiss granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0880. State ex rel. McDougald v. Greene.

In Mandamus. Sua sponte, alternative writ granted. The following briefing schedule is set for the presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05: The parties shall file any evidence they intend to present within 20 days, relator shall file a brief within 10 days after 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 7 days after the filing of respondent's brief.

Kennedy, French, Donnelly, and Stewart, JJ., concur.

O'Connor, C.J., and Fischer and DeWine, JJ., dissent and would dismiss the cause.

2019-0889. State ex rel. Wiley v. Tenth Dist. Court of Appeals Judges.

In Procedendo. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0935. White v. Franklin Cty. Mun. Court Clerk.

In Prohibition. On motion to dismiss of respondents Ohio Department of Public Safety and Bureau of Motor Vehicles Deputy Registrar License Agency. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0936. White v. Bexley Police Dept.

In Prohibition. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0941. State ex rel. Rodgers v. Pureval.

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

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0968. Scaccia v. Buckwalter.

In Mandamus and Prohibition. On relator's emergency motion for temporary restraining order and motion for stay pending decision on petition. Motions denied. Relator's motion to dismiss respondents' motion to strike and relator's motion to amend complaint and issue summons denied. Respondents' motions to dismiss and respondent John J. Scaccia's motion to dismiss amended complaint granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0971. Barnes v. Collins.

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, French, DeWine, Donnelly, and Stewart, JJ., concur.

Fischer, J., not participating.

2019-0977. Harris v. Patel.

Miscellaneous case. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-0978. Harris v. Dayton Premier Mgt.

Miscellaneous case. On respondent's motion to dismiss. Motion granted. Respondent's motion and memorandum in response denied. Relator's request for production of documents denied. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, and DeWine, JJ., concur.

Donnelly, J., dissents and would grant an alternative writ.

Stewart, J., dissents and would grant an alternative writ, appoint counsel, and grant relator's request for production of documents.

2019-0996. State v. Peck.

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-1014. Dixon v. Bowerman.

In Habeas Corpus. On petitioner's motions for leave to file memorandum and to provide indictment, judgment entry, and commitment papers. Motions denied. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-1023. Gregory v. State.

In Habeas Corpus. Sua sponte, cause dismissed as moot.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2019-1029. Dugas v. Harris.

In Habeas Corpus. On petitioner's motion for entry of default judgment and to discharge the prisoner. Motions denied. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

MOTION AND PROCEDURAL RULINGS

2018-0013. State ex rel. McDougald v. Greene.

In Mandamus. On relator's motion for relief from judgment or order. Motion denied.

Donnelly, J., dissents.

2018-0241. State ex rel. Black v. Harsha.

Miscellaneous case. On relator's motion for breach of contract. Motion denied.

2018-0992. Johnson v. Goulding.

In Mandamus. On respondent's "motion to separately state and number." Motion granted in part. Complaint in procedendo stricken and relator ordered to file new complaint with numbered paragraphs under a new case number.

2018-1122. State ex rel. Peaspanen v. Ashtabula Cty. Auditor's Office.

In Mandamus. On respondent Judith Peaspanen's amended motion to poll the justices and clarify their decision to dismiss without opinions. Motion denied.

2019-0497. State v. Brown.

Cuyahoga App. No. 106667, 2019-Ohio-313. On appellant's motions for enclosed document. Motions denied.

2019-0597. State ex rel. Fontain v. Nestor.

In Prohibition. On respondents' motion to have relator declared a vexatious litigator. Motion denied. Relator's motion in opposition and motion to quash respondent's motion to have relator declared a vexatious litigator and request for evidentiary hearing denied. Relator's requests to take judicial notice denied.

Fischer, J., dissents and would grant respondents' motion to have relator declared a vexatious litigator.

2019-0729. State v. Price.

Cuyahoga App. No. 107096, 2019-Ohio-1642. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the following issue: "Whether the 'but-for causality' rationale of *Burrage v. United States*, 571 U.S. 204, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014), applies to the 'cause serious physical harm to [another]' element of R.C. 2925.02(A)(3)." The conflict case is *State v. Kosto*, 5th Dist. Licking No. 17 CA 54, 2018-Ohio-1925.

Sua sponte, cause consolidated with 2019-0822, *State v. Price*, and briefing in case Nos. 2019-0729 and 2019-0822 shall be consolidated. The parties shall file two originals of the briefs permitted under S.Ct.Prac.R. 16.02 through 16.04 and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. 16.01 through 16.04.

Kennedy and DeWine, JJ., dissent.

2019-0767. State ex rel. Bender v. Franklin Cty. Bd. of Elections.

In Mandamus. On relator's motion for attorney fees. Motion denied.

2019-0857. State v. Myers.

Lucas App. Nos. L-18-1033 and L-18-1118, 2019-Ohio-2048. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2018-1144, *State v. Harper*, and briefing schedule stayed. Sua sponte, cause consolidated with 2019-0927, *State v. Myers*, and briefing in case Nos. 2019-0857 and 2019-0927 shall be consolidated.

French and Fischer, JJ., would not hold the cause.

Donnelly, J., dissents.

2019-0909. State v. Winslow.

Montgomery App. No. 28178, 2019-Ohio-2357. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2019-0737, *State v. Brown*, and briefing schedule stayed.

Fischer, J., would not hold the cause.

2019-1007. Fed. Natl. Mtge. Assn. v. DeMartin.

Franklin App. No. 18AP-221, 2019-Ohio-2136. On appellant's emergency motion to vacate order and request for temporary stay of order authorizing private selling officer to sell real estate without a supersedeas bond. Motion and request denied.

French, J., not participating.

2019-1021. State v. Hickinbotham.

Stark App. No. 2018CA000142, 2019-Ohio-2978. On appellant's motion for stay of the court of appeals' judgment. Motion granted.

O'Connor, C.J., and Kennedy and DeWine, JJ., dissent.

2019-1027. State v. Pettus.

Hamilton App. No. C-170712, 2019-Ohio-2023. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue as stated in the order entered by the court of appeals on July 8, 2019: "When a defendant is convicted of multiple theft offenses committed in the offender's same employment, capacity, or relationship to another, does R.C. 2913.61(C) permit the offenses to be aggravated where the victim of the offense is not an elderly person, a disabled adult, or an active duty service member or spouse of an active duty service member?" The conflict case is *State v. Phillips*, 12th Dist. Clinton No. CA2009-03-001, 2010-Ohio-2711.

Sua sponte, cause consolidated with 2019-0914, *State v. Pettus*, and briefing in case Nos. 2019-0914 and 2019-1027 shall be consolidated. The parties shall file two originals of the briefs permitted under S.Ct.Prac.R. 16.02 through 16.04 and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. 16.01 through 16.04.

French and DeWine, JJ., dissent.

2019-1038. State v. Moore.

Trumbull App. No. 2018-T-0056, 2019-Ohio-2512. On appellant's motion for stay. Motion denied. Appellee's memorandum opposing motion for stay or, in the alternative, motion to strike denied as moot.

2019-1082. Delaware Golf Club, L.L.C. v. Dornoch Estates Homeowners Assn., Inc.

Delaware App. No. 19 CAE 04 0027. On appellants' motion to stay enforcement of judgment pending appeal. Motion denied.

Kennedy and Fischer, JJ., dissent and would grant the motion on the condition that bond is provided.

Donnelly, J., dissents.

APPEALS ACCEPTED FOR REVIEW

2019-0606. State v. Townsend.

Cuyahoga App. No. 107186, 2019-Ohio-1134. Appeal not accepted and cross-appeal accepted.

Kennedy and DeWine, JJ., would not accept the cross-appeal.

Fischer and Donnelly, JJ., would accept the appeal on proposition of law No. VII.

Stewart, J., dissents.

2019-0777. State v. Grayson.

Cuyahoga App. No. 106578, 2019-Ohio-864. Appeal accepted. Sua sponte, cause held for the decision in 2017-1691, *State v. Christian*, and briefing schedule stayed.

French and DeWine, JJ., would not hold the cause.

Kennedy, J., dissents.

2019-0822. State v. Price.

Cuyahoga App. No. 107096, 2019-Ohio-1642. Appeal accepted on proposition of law No. III and cross-appeal not accepted. Sua sponte, cause consolidated with 2019-0729, *State v. Price*, and briefing in case Nos. 2019-0822 and 2019-0729 shall be consolidated. The parties shall file two originals of the briefs permitted under S.Ct.Prac.R. 16.02 through 16.04 and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. 16.01 through 16.04.

Kennedy and DeWine, JJ., would not accept the appeal.

French, J., would accept the cross-appeal.

Fischer and Donnelly, JJ., would accept the appeal on all three propositions of law and would accept the cross-appeal.

Stewart, J., would accept the appeal on all three propositions of law.

2019-0899. State v. Frierson.

Cuyahoga App. No. 106841, 2019-Ohio-317. Appeal accepted on proposition of law No. II. Sua sponte, cause held for the decision in 2019-0606, *State v. Townsend*, and briefing schedule stayed.

Fischer, Donnelly, and Stewart, JJ., would accept the appeal on both propositions of law.

Kennedy and DeWine, JJ., dissent.

2019-0914. State v. Pettus.

Hamilton App. No. C-170712, 2019-Ohio-2023. Appeal accepted on proposition of law No. I. Sua sponte, cause consolidated with 2019-1027, *State v. Pettus*, and briefing in case Nos. 2019-0914 and 2019-1027 shall be consolidated. The parties shall file two originals of the briefs permitted under S.Ct.Prac.R. 16.02 through 16.04 and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. 16.01 through 16.04.

Kennedy, J., would accept the appeal on all three propositions of law.

French, DeWine, and Stewart, JJ., dissent.

2019-0927. State v. Myers.

Lucas App. Nos. L-18-1033 and L-18-1118, 2019-Ohio-2048. Appeal accepted. Sua sponte, cause held for the decision in 2018-1144, *State v. Harper*, and briefing schedule stayed. Sua sponte, cause consolidated with 2019-0857, *State v. Myers*, and briefing in case Nos. 2019-0927 and 2019-0857 shall be consolidated.

Kennedy, Fischer, and Donnelly, JJ., would not hold the cause.

APPEALS NOT ACCEPTED FOR REVIEW

2019-0874. South-Western City School Dist. Bd. of Edn. v. McClain.

Franklin App. No. 19AP-65.

Donnelly and Stewart, JJ., dissent.

2019-0912. State v. Grevious.

Butler App. No. CA2018-05-093, 2019-Ohio-1932.

French, Fischer, and Stewart, JJ., dissent and would accept the appeal on proposition of law No. I.