

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY
November 20, 1996

MERIT DOCKET

95-2051. State ex rel. Smith v. McGraw-Edison Co.
In Mandamus. On motion to dismiss of McGraw-Edison Company. Motion granted and cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1423. Jones v. Kelly.
Clark App. No. 96CA0061. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1808. Lucas Cty. Bd. of Commrs. v. Pub. Util. Comm.
Public Utilities Commission, Nos. 94-1964-EL-CSS, 95-1063-EL-AIS, 95-1139-EL-COI, 95-1140-EL-COI, 95-299-EL-AIR, 95-300-EL-AIR, 95-386-EL-AAM and 95-387-EL-AAM. On motion to dismiss of Toledo Edison Company. Motion granted and cause dismissed.,

Moyer, C.J., F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.
Douglas and Resnick, JJ., not participating.

96-1889. Kaptur v. Pub. Util. Comm.
Public Utilities Commission, Nos. 94-1964-EL-CSS, 95-1063-EL-AIS, 95-1139-EL-COI, 95-1140-EL-COI, 95-299-EL-AIR, 95-300-EL-AIR, 95-386-EL-AAM and 95-387-EL-AAM. On motion to dismiss of Toledo Edison Company. Motion granted and cause dismissed.

Moyer, C.J., F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.
Douglas and Resnick, JJ., not participating.

96-2007. State ex rel. McArthur v. Peters.
In Mandamus. On answer of respondent and on motion for judgment on pleadings. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2091. State ex rel. Reese v. Mengel.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2093. State ex rel. Lesser v. Thompson.

In Procedendo. On motion to dismiss or, in the alternative, motion for summary judgment. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2097. Smith v. Tubbs Jones.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2103. Ohio Suburban Water Co. v. Lineman.

In Prohibition. On respondent's motion to dismiss, motion for leave to intervene by Miami County and Industrial Water, Inc., and intervenors' motion to dismiss. Motions to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2147. State ex rel. Jalowiec v. Court of Appeals of Ohio Ninth Judicial District.

In Mandamus. On answer of respondent and on motion to dismiss or for judgment on the pleadings. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2149. State ex rel. Brown v. Ohio Adult Parole Auth.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2156. State ex rel. Weakley v. Ninth Dist. Court of Appeals.

In Mandamus. On answer of respondent Ninth District Court of Appeals and on motion to dismiss or for judgment on the pleadings by Ninth District Court of Appeals. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2161. Hamm v. Bowman.

In Mandamus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2177. State ex rel. Houston v. Ohio Adult Parole Auth.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2179. State ex rel. Graves v. Cross.

In Mandamus. On motion to dismiss and answer. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2193. Hadlock v. Clerk of Cleveland Mun. Court.

On answer of respondent Cleveland Municipal Court. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2214. Humphrey v. Ohio Adult Parole Auth.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2223. Fox v. Seidner.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2243. Shirley v. State.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2274. Garr v. Turner.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2290. State ex rel. Pope v. Schemmel.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2320. Harry v. Wilkinson.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2336. State ex rel. Jackson v. Ohio Adult Parole Auth.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2341. Armstrong v. Noble Correctional Inst.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2403. Chesney v. State.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2413. Carden v. Miami Hardware & Appliance Co.
Montgomery App. No. 15783. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.
Moyer, C.J., Cook and Stratton, JJ., dissent.

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL
CONSTITUTIONAL QUESTION AND DISCRETIONARY
APPEALS, IF APPLICABLE, NOT ALLOWED

96-1212. State v. Kapor.
Hamilton App. Nos. C-950104 and C-950105.

Douglas and Cook, JJ., dissent.
Stratton, J., not participating.

96-1227. State v. Martinez.
Lucas App. No. L-96-098.

96-1232. State v. Jackson.
Cuyahoga App. No. 69501.

96-1236. State v. McMahon.
Clark App. Nos. 94CA49 and 94CA50.

96-1266. Mayfield Hts. v. Scarso.
Cuyahoga App. No. 69115.

96-1278. State v. Moorehead.
Franklin App. No. 95APA09-1116.

96-1299. May v. Bowland.
Hamilton App. No. C-950633.
Stratton, J., not participating.

96-1312. State v. Beyers.
Greene App. No. 95CA32.

96-1315. Boardman Twp. Bd. of Trustees v. Fleming.
Mahoning App. No. 95 C.A. 57.

96-1316. In re Real Property & Improvement Commonly Known as 41925 TR 1029,
Blissfield, Ohio.
Coshocton App. No. 95CA23.

96-1321. Dillon v. Ronald E. Plymale, L.P.A.
Franklin App. No. 95APE10-1332.
Resnick, J., dissents.

96-1324. State v. Porter.
Summit App. No. 17240.
Cook, J., not participating.

96-1330. State v. Brock.
Shelby App. No. 17-95-3.
Douglas, Resnick and Stratton, JJ., dissent.

96-1331. State v. Moore.
Hamilton App. No. C-950600.
Stratton, J., not participating.

96-1334. In re Guardianship of Sechler.
Franklin App. No. 95APF09-1143.
F.E. Sweeney, J., dissents.

96-1335. Galluzzo v. Galluzzo.
Champaign App. No. 95CA15.

96-1338. Szigeti v. Ohio Dept. of Commerce, Consumer Fin. Div.
Lucas App. No. L-95-225.
Resnick, J., not participating.

96-1339. Englund v. Wendy's Internatl., Inc.
Lucas App. No. L-95-229.
F.E. Sweeney, J., dissents.
Resnick and Stratton, JJ., not participating.

96-1340. State v. Brown.
Wayne App. No. 95CA0047.

96-1344. State v. Johnson.
Montgomery App. No. 15253.

96-1345. State v. Larson.
Cuyahoga App. No. 69560.

96-1348. State v. Riffle.
Summit App. No. 17495.

96-1354. Giering v. Nashville Productions, Inc.
Cuyahoga App. No. 68841.
Douglas, J., dissents.

96-1355. Hickle v. Malone.
Hancock App. No. 5-95-57.

96-1361. State v. Rice.
Sandusky App. No. S-95-033.
Moyer, C.J., Douglas and Stratton, JJ., dissent.

96-1364. State v. Hall.
Sandusky App. No. S-95-032.
Moyer, C.J., Douglas and Stratton, JJ., dissent.

96-1366. State v. Harris.
Hancock App. No. 5-96-4.

96-1368. Martin v. Parcels of Land Encumbered with Tax Liens.
Lake App. No. 94-L-188.

96-1369. State v. List.
Summit App. No. 17295.

96-1377. Henry v. Edwards.
Montgomery App. No. 15205.
Moyer, C.J., and Stratton, J., dissent.

96-1381. State v. Brown.
Hamilton App. No. C-950545.

96-1383. State v. Blankenship.
Butler App. No. CA96-04-087.

96-1385. Hester v. Hester.
Miami App. No. 95CA64.
Stratton, J., dissents.

96-1398. State v. Hurt.
Miami App. No. 95CA43.

96-1426. N. Royalton v. Kozlowski.
Cuyahoga App. No. 69138.

96-1438. Toledo v. Crenshaw.
Lucas App. No. L-96-116.
Resnick, J., not participating.

96-1443. Waggoner v. Waggoner.
Wayne App. No. 95CA0040.

96-1451. Howard v. Howard.
Lucas App. No. L-96-050.

96-1455. State v. Luikart.
Marion App. No. 9-95-57.

96-1462. Teichman v. Weltman.
Cuyahoga App. Nos. 69003, 69005 and 69006.

96-1475. Condo v. B&R Tire Co.
Mahoning App. No. 95 C.A. 166.

96-1478. State v. Haynes.
Franklin App. No. 96APA01-139.

96-1481. In re Forfeiture of One Tract of Real Property Located at 1081 W.
State St., Salem, Ohio.
Columbiana App. No. 94C23.
Moyer, C.J., dissents.

96-1489. Shell v. Shell.
Darke App. No. 1402.

96-1504. State v. Sweeten.
Hamilton App. No. C-950773.
Stratton, J., not participating.

96-1511. State v. Coleman.
Cuyahoga App. No. 69202.
Douglas, Resnick and Stratton, JJ., dissent.

96-1519. State v. Steele.
Hamilton App. No. C-950660.

MOTION DOCKET

96-535. Levengood v. Transfuel, Inc.
Tuscarawas App. No. 95AP060049. On motion for leave to file response to
appellant's objection to attorney fees. Motion granted.
Cook, J., dissents.

96-1941. State ex rel. McGowan v. Cuyahoga Metro. Hous. Auth.
In Mandamus. On motion to dismiss. Sua sponte, alternative writ granted.

96-1991. State ex rel. World Stamping & Mfg. Co. v. Indus. Comm.
In Mandamus. On answer of respondent Industrial Commission, motion for judgment
on pleadings of Industrial Commission, answer of respondent Jon Suech, and
motion for issuance of peremptory or alternative writ. Sua sponte, alternative
writ granted.

96-1997. State ex rel. Rea v. Ohio Dept. of Edn.
In Mandamus. On answer of respondent Ohio Department of Education and on answer
of respondent Ohio State University. Sua sponte, alternative writ granted.

96-2244. State v. Walton.
Clermont App. No. CA91-03-022. On motion for leave to file delayed appeal.
Motion denied.

96-2255. State v. Bowlin.
Montgomery App. No. 14174. On motion for leave to file delayed appeal. Motion
denied.

96-2259. State v. Estes.
Montgomery App. No. 15419. On motion for leave to file delayed appeal. Motion
denied.
Resnick and Pfeifer, JJ., dissent.

96-2390. State v. Colvin.
Richland App. No. 95CA76. On motion to expedite on calendar. Motion denied.
Moyer, C.J., dissents.

DISCRETIONARY APPEALS ALLOWED

96-1209. Ameigh v. Baycliffs Corp.
Ottawa App. No. OT-95-049.
F.E. Sweeney, Cook and Stratton, JJ., dissent.
Resnick, J., not participating.
Peggy Bryant, J., of the Tenth Appellate District, sitting for Resnick, J.

96-1269. Al Post 763 v. Ohio Liquor Control Comm.
Greene App. No. 95CA78. The discretionary appeal is allowed; sua sponte, cause
held for the decision in 96-1270 and 95-1271, VFW Post 1238 v. Ohio Liquor
Control Comm., Huron App. No. H-95-065; briefing schedule stayed.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-1283. Kala v. Aluminum Smelting & Refining Co.
Cuyahoga App. No. 69710.
Moyer, C.J., Resnick and Cook, JJ., dissent.

96-1329. Pauly v. Pauly.
Lucas App. No. L-95-293. The discretionary appeal is allowed on Proposition of
Law No. I only.
F.E. Sweeney and Pfeifer, JJ., dissent.
Resnick, J., not participating.

96-1411. Stivison v. Goodyear Tire & Rubber Co.
Hocking App. No. 95CA13.
Moyer, C.J., Cook and Stratton, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

96-1229. Harrell v. Harrell.
Lorain App. No. 95CA006164.

96-1254. Heaton v. Canton.
Stark App. No. 1995CA00346.
Moyer, C.J., dissents.

96-1308. State v. Wombold.
Montgomery App. No. 14873.

96-1314. Beard v. Pannell.
Sandusky App. No. S-95-039.
Pfeifer, J., dissents.
Resnick, J., not participating.

96-1322. State v. Walker.
Cuyahoga App. No. 68889.

96-1323. Eaton Twp. Bd. of Trustees v. Cleveland Elec. Illum. Co.
Lorain App. No. 95CA006161.
Moyer, C.J., dissents.
F.E. Sweeney, J., not participating.

96-1327. Adams Cty. Child Support Enforcement Agency v. Osborne.
Adams App. No. 95CA592.
Moyer, C.J., Douglas and Stratton, JJ., dissent.

96-1332. State ex rel. Harris v. Indus. Comm.
Franklin App. No. 95APE10-1378.
Resnick, J., dissents.

96-1343. York v. Univ. of Cincinnati Med. Ctr.
Franklin App. Nos. 95API09-1117 and 95API09-1127.

96-1365. Tedeschi v. Mercer.
Carroll App. No. 649.
Resnick, J., dissents.

96-1395. Gillespie v. Iler.
Van Wert App. No. 15-95-8.

Resnick, J., dissents.

96-1417. Walker v. Dotson.
Clermont App. No. CA95-10-071.
F.E. Sweeney, J., dissents.

96-1418. State v. Misener.
Cuyahoga App. No. 69152.

96-1434. Ambrosia Coal & Constr. Co. v. C.B.G., Inc.
Mahoning App. No. 94 C.A. 199.

96-1449. State v. Lemasters.
Meigs App. No. 93CA512.

96-1453. Minor v. Allstate Ins. Co.
Montgomery App. No. 15423.

96-1484. Debbe v. Debbe.
Auglaize App. No. 2-96-1.

96-1518. D.G.M., Inc. v. Cremeans Concrete & Supply Co.
Gallia App. No. 95CA10.

96-1557. Butler Cty. Bd. of Mental Retardation & Developmental Disabilities v. Ohio Dept. of Mental Retardation & Developmental Disabilities.
Franklin App. No. 95API08-1066. On motion to consolidate with 96-1067, Butler Cty. Bd. of Mental Retardation & Developmental Disabilities v. Ohio Dept. of Mental Retardation & Developmental Disabilities, Franklin App. No. 95API08-1066.
Motion denied.

96-1600. Belovich v. Saghafi.
Cuyahoga App. No. 70071.

96-1775. State v. Weaver.
Cuyahoga App. No. 67389.

96-2106. State v. Wilmoth.
Ross App. No. 94CA2034.

96-2118. Carden v. Miami Hardware & Appliance Co.
Montgomery App. No. 15783.
Moyer, C.J., would allow on Proposition of Law No. I only.

96-2130. State v. Kurincic.
Cuyahoga App. No. 68246.

96-2195. State v. Dillon.
Monroe App. No. 725.

96-2201. State v. Larkins.
Cuyahoga App. Nos. 52779 and 52780.

96-2221. State v. Schocke.
Clermont App. No. CA93-11-080.

RECONSIDERATION DOCKET

94-1909. State ex rel. MTD Products, Inc. v. Indus. Comm.
Franklin App. No. 93AP-1002. Reported at 76 Ohio St.3d 593, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

F.E. Sweeney, J., dissents.

95-1683 and 95-1893. State v. Busch.
Franklin App. Nos. 94APC11-1670 and 94APC11-1671. Reported at 76 Ohio St.3d
613, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, Cook and Stratton, JJ., dissent.

On motion for leave to file amicus motion for reconsideration by Ohio
Prosecuting Attorneys Association. Motion denied.

96-802. Burkett v. Preble Cty. Bd. of Revision.
Board of Tax Appeals, No. 95-D-761. Reported at 77 Ohio St.3d 1409, ___ N.E.2d
___. On motion for reconsideration. Motion denied.

96-939. Smith v. Ohio Dept. of Human Serv.
Clermont App. No. CA95-07-044. Reported at 76 Ohio St.3d 1492, ___ N.E.2d ___.
On motion for reconsideration and on motion for stay pending appeal to the
United States Supreme Court. Motions denied.

96-963. Scott v. Spearman.
Licking App. No. 95CA55. Reported at 76 Ohio St.3d 1495, ___ N.E.2d ___. On
motion for reconsideration. Motion granted and discretionary appeal allowed.

Moyer, C.J., Cook and Stratton, JJ., dissent.

96-978. State v. Smith.
Summit App. No. 16910. Reported at 76 Ohio St.3d 1492, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-1001. Evans v. Leona Culbertson Trust.
Knox App. No. 9CA000031. Reported at 76 Ohio St.3d 1496, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-1030. Miller v. Bike Athletic Co.
Belmont App. No. 94-B-52. Reported at 76 Ohio St.3d 1476, ___ N.E.2d ___. On
motion for reconsideration. Motion granted and discretionary appeal allowed.

Moyer, C.J., Cook and Stratton, JJ., dissent.

96-1074. Vance v. Trimble.
Franklin App. No. 95APE08-1020. Reported at 77 Ohio St.3d 1415, ___ N.E.2d ___.
On motion for reconsideration. Motion granted and discretionary appeal allowed.

Moyer, C.J., Cook and Stratton, JJ., dissent.

96-1113. Blackburn v. Tudor.
Scioto App. No. 95CA2355. Reported at 77 Ohio St.3d 1416, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-1115. State v. Swiger.
Tuscarawas App. No. 95AP030018. Reported at 77 Ohio St.3d 1412, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

96-1116. State v. Lentz.

Erie App. No. E-95-005. Reported at 77 Ohio St.3d 1412, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Moyer, C.J., Resnick and Stratton, JJ., dissent.

96-1195. Smith v. Ohio Dept. of Human Serv.

Clermont App. No. CA95-07-044. Reported at 76 Ohio St.3d 1493, ___ N.E.2d ___. On amended motion for reconsideration and on motion for stay pending appeal to the United States Supreme Court. Motions denied.

96-1200. State v. Smith.

Portage App. No. 95-P-0104. Reported at 77 Ohio St.3d 1413, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-1223. State ex rel. Graham v. Rinker.

In Mandamus. Reported at 76 Ohio St.3d 1490, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

96-1403. State v. Sells.

Crawford App. No. 3-96-12. Reported at 77 Ohio St.3d 1420, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-1769. State ex rel. Jackson v. Kinkela.

In Mandamus. Reported at 76 Ohio St.3d 1490, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-2037. Armstrong v. Ohio Dept. of Rehab. & Corr.

In Mandamus. Reported at 77 Ohio St.3d 1410, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-2220. State ex rel. DPR Properties, Inc. v. Butler Cty. Bd. of Elections.

Reported at 77 Ohio St.3d 1434, ___ N.E.2d ___. On motion for reconsideration. Motion denied.