

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY  
January 31, 1996

MERIT DOCKET

95-2159. In re Kilbarger.

In Habeas Corpus. Sua sponte, cause dismissed.

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

95-2362. State ex rel. Dixon 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, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

95-2374. State ex rel. Gerstenberger v. Migliorini.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.  
Wright and Cook, JJ., would also allow a nonoral hearing on briefs concerning frivolous conduct.

95-2438. State ex rel. Brenneman v. Patton.

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

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

95-2459. State ex rel. Smith v. McNulty.

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

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

95-2462. Madaris 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, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

95-2465. Marcum 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, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

95-2487. Fies v. Walker.

In Habeas Corpus. Sua sponte, cause dismissed.

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

95-2490. State ex rel. Huggins v. Wilkenson.

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

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

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

95-2520. King v. Alexander.

In Habeas Corpus. Sua sponte, cause dismissed.

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

95-2524. State ex rel. Casilleja v. Abood.

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

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

95-2538. Wilburn v. Alexander.

In Habeas Corpus. Sua sponte, cause dismissed.

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

95-2542. State ex rel. Alford v. Kelbley.

In Mandamus. Sua sponte, cause dismissed.

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

95-2588. Scott v. Moyer.

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

Douglas, Acting C.J., Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Moyer, C.J., not participating.

95-2654. In re Howard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

Wright, J., dissents.

95-2673. Chapman v. Ohio Dept. of Corr.

In Habeas Corpus. Sua sponte, cause dismissed.

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

96-19. Smith v. Ohio Adult Parole Auth.  
In Mandamus. Sua sponte, cause dismissed.  
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook,  
JJ., concur.

96-20. Beckett v. Coyle.  
In Habeas Corpus. Sua sponte, cause dismissed.  
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook,  
JJ., concur.

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

95-1911. Mancino v. Thrower.  
Cuyahoga County, No. 67914.  
F.E. Sweeney, J., dissents.

95-1920. State v. Walton.  
Lorain County, No. 94CA005940.

95-2007. State v. Davis.  
Stark County, No. 1995CA00021.

95-2019. State v. Weaver.  
Cuyahoga County, No. 67389.  
Wright, J., dissents.

95-2024. State v. Dunlap.  
Licking County, No. 95CA2.  
Moyer, C.J., Wright and Pfeifer, JJ., dissent.

95-2025. Chudner v. Cleveland City School Dist.  
Cuyahoga County, No. 68572.

95-2035. Weider v. Brown.  
Franklin County, No. 95APE01-109.  
Pfeifer, J., dissents.

95-2041. Fairview Park v. Kolecki.  
Cuyahoga County, No. 68045.  
Douglas, J., dissents.

95-2052. State v. James.  
Hardin County, No. 6-94-18.  
Wright, J., dissents.

95-2053. State v. Parnell.  
Cuyahoga County, No. 68254.

95-2055. Dunkle v. Kinsey.  
Summit County, No. 17114.  
Cook, J., not participating.

95-2056. State v. Gantz.  
Franklin County, No. 95APA02-202.

95-2058. Neuman v. Columbus.  
Franklin County, No. 95APE02-161.  
Moyer, C.J., and Wright, J., dissent.

95-2064. Rizzen v. Spaman.  
Lucas County, No. L-94-201.

95-2067. Weintraub v. Hurley.  
Franklin County, No. 95APG02-166.

95-2068. Bargar v. MTD Products, Inc.  
Medina County, No. 2418-M.

95-2070. State v. Garcia.  
Cuyahoga County, No. 67858.

95-2072. State v. Payne.  
Ross County, No. 94CA2045.

95-2073. Ohio Holding Co. v. Franklin Cty. Bd. of Revision.  
Franklin County, No. 95APH02-155.  
Douglas, J., dissents.

95-2104. State v. Nobles.  
Montgomery County, No. CA 14480.

95-2113. State v. Moore.  
Erie County, No. E-95-034.

95-2132. State v. McNear.  
Summit County, No. 16951.

95-2214. State v. Collins.  
Athens County, No. 94CA1639.

95-2283. State v. Allen.  
Cuyahoga County, No. 68570.

95-2328. Wolf v. Sigler.  
Franklin County, No. 95APF08-1047.

95-2331. State v. Herring.  
Stark County, No. 1995CA00008.

95-2336. State v. Sheffield.  
Hamilton County, No. C-950223.  
Douglas and Pfeifer, JJ., dissent.

95-2342. Bacon v. McBride.  
Trumbull County, No. 95-T-5188.  
Pfeifer, J., dissents.

95-2344. Marble v. Sackman.  
Richland County, No. 95CA2.

MOTION DOCKET

95-1430. State v. Haught.

Summit County, No. 16848. This cause was held for the decision in 94-2526, State v. Pless (1996), 74 Ohio St.3d 333, \_\_\_ N.E.2d \_\_\_, and the briefing schedule was stayed.

Sua sponte, the parties are to brief the issue whether "filed" means "time-stamped"; no oral argument is to be scheduled.

Resnick and Pfeifer, JJ., dissent.

95-1222. Byrnes v. LCI Communication Holdings Co.

Franklin County, Nos. 94APE09-1372 and 94APE09-1396. On motion for admission pro hac vice of Cathy Ventrell-Monsees by Russell Kelm. Motion granted.

95-1906. State v. Knisely.

Huron County, No. H-94-044. On motion for admission pro hac vice. Motion granted.

95-2441. State v. Loesser.

Cuyahoga County, No. 66762. 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' Journal Entry filed December 5, 1995: "The motion of the appellant to certify a conflict between this Court's decision and the judgment in State v. Trivedi (1982), 8 Ohio App.3d 412 [8 OBR 534, 457 N.E.2d 868], is hereby granted.

"The rule of law upon which this alleged conflict exists is whether the trial court, pursuant to R.C. 2951.02(B)(9) and R.C. 2951.02(C), has the authority to order restitution as a condition of probation as compensation to the victim for injury, damage or loss sustained other than property damage or the value of the property which is subject of any theft offense."

Sua sponte, cause consolidated with 95-2439, infra.

95-2448. In re Turner.

Stark County, No. 1994CA00366. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated with 95-2446, infra; briefing schedule stayed.

95-2501. State v. Johnston.

Franklin County, No. 95APC06-695. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232; briefing schedule stayed; cause consolidated with 95-2430, infra.

95-2506. State v. Francis.

Warren County, Nos. CA95-04-039, CA95-04-040 and CA95-05-050. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

Pfeifer, J., dissents.

95-2589. State v. Mosley.

Franklin County, No. 94APA12-1707. On motion for appointment of counsel. Motion denied.

95-2653. State v. Braxton.

Lucas County, No. L-94-355. On motion for leave to file delayed appeal. Motion granted.

Resnick, J., not participating.

95-2670. State v. Darrington.

Cuyahoga County, No. 65588. On motion for leave to file delayed appeal. Motion denied.

Douglas, Resnick, and Pfeifer, JJ., dissent.

96-30. State v. Eves.

Warren County, No. CA95-02-010. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

#### DISCRETIONARY APPEALS ALLOWED

95-2040. Mason v. Rischar.

Warren County, No. CA94-08-072. Discretionary appeal allowed on Proposition of Law No. I. only; sua sponte, cause held for the decision in 95-1377 and 95-1466, infra; briefing schedule stayed.

95-2059. Romp v. Haig.

Hamilton County, No. C-940268.

Pfeifer, J., dissents.

95-2093. Mayfield Hts. v. Snappy Car Rental.

Cuyahoga County, Nos. 68097 and 68098. (Appeal by Snappy Car Rental, Inc.; second appeal by Davis Development Group, Inc. et al.)

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

95-2430. State v. Johnston.

Franklin County, No. 95APC06-695. Sua sponte, cause held for the decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232; briefing schedule stayed; cause consolidated with 95-2501, supra.

95-2439. State v. Loesser.

Cuyahoga County, No. 66762. Sua sponte, cause consolidated with 95-2441, supra.

95-2446. In re Turner.

Stark County, No. 1994CA00366. On motion to consolidate with 95-941 and 95-942, In re Young Children, Stark County, No. 94CA0198; 95-1213, In re Bunting Children, Stark County, No. 94CA-0264; and 95-1510 and 1688, In re Brock Children, Stark County, No. 94CA0227. Sua sponte, cause held for the decisions in the above cases; briefing schedule stayed.

Resnick, J., would grant the motion to consolidate.

Pfeifer, J., dissents.

#### DISCRETIONARY APPEALS NOT ALLOWED

95-1546. State v. Barr.

Madison County, No. CA94-06-025.

95-1912. Hill v. B.F. Goodrich Co.

Marion County, No. 9-94-59.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-1913. Musson v. Musson.

Hardin County, No. 6-95-1.

95-1916. State v. Greer.  
Jackson County, No. 94CA748.

95-1939. Ohio Bur. of Emp. Serv. v. Byers.  
Fairfield County, No. 95CA006.  
Wright, J., dissents.

95-1971. W. Res. Mut. Cas. Co. v. Moran.  
Knox County, No. 95CA4.  
Resnick and F.E. Sweeney, JJ., dissent.

95-2038. Hi Rise, Inc. v. Ohio Liquor Control Comm.  
Hamilton County, No. C-940638.

95-2042. C.A. Kasten & Assoc., Ltd. v. Lynham.  
Cuyahoga County, No. 67736.

95-2054. Hudson v. Corsaut.  
Defiance County, No. 4-94-16.  
Moyer, C.J., and F.E. Sweeney, J., dissent.

95-2074. Sheffler v. Mahoning Cty. Bd. of Commrs.  
Mahoning County, No. 95 C.A. 109.  
Pfeifer, J., dissents.

95-2076. Olszko v. Tracy.  
Franklin County, No. 95APH015.  
Wright, J., dissents.

95-2082. Randolph v. Kaestel-Hansen.  
Lake County, No. 94-L-114.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-2083. Wall v. Firelands Radiology, Inc.  
Huron County, No. H-94-048.  
Douglas and F.E. Sweeney, JJ., dissent.  
Resnick, J., not participating.

95-2089. Hartong v. Makary.  
Summit County, No. 17085.  
Resnick, J., dissents.

95-2094. Midwestern Indemn. Co. v. Craig.  
Allen County, Nos. 1-95-2 and 1-95-3.  
Wright, J., dissents.

95-2102. Takacs v. Baldwin.  
Huron County, No. H-94-035.  
Resnick, J., not participating.

95-2107. Cincinnati Ins. Co. v. Mr. Coffee.  
Cuyahoga County, Nos. 68213 and 68228.  
Wright, J., dissents.

95-2116. Harris v. Burger.  
Cuyahoga County, No. 68303.

95-2127. Hoecker v. Dayton & Montgomery Cty. Park Dist.  
Montgomery County, No. 15141.  
Wright, J., dissents.

95-2149. McKeegan v. Sears, Roebuck & Co.  
Cuyahoga County, No. 68111.  
Moyer, C.J., dissents.

95-2172. State v. Hollis.  
Hamilton County, No. C-940470.

95-2199. State v. Buoscio.  
Summit County, No. 17031.

95-2235. Brown v. Ohio Bur. of Emp. Serv.  
Marion County, No. 9-95-13.  
Pfeifer and Cook, JJ., dissent.

95-2260. In re Petition for Incorporation of Holiday City.  
Williams County, No. WM-93-017.  
Douglas and Wright, JJ., dissent.  
Resnick, J., not participating.

95-2299. In re Annexation of 373.2255 Acres.  
Warren County, No. CA95-01-006.  
Douglas, J., dissents.

95-2309. Sharkey v. Lakota Local School Dist.  
Wood County, No. WD-95-003.  
Douglas and F.E. Sweeney, JJ., dissent.  
Resnick, J., not participating.

95-2313. Williams v. Williams.  
Cuyahoga County, No. 68055.  
Moyer, C.J., and F.E. Sweeney, J., dissent.

95-2355. Kitts v. Utica Natl. Ins. Group.  
Lorain County, No. 95CA006088.

#### RECONSIDERATION DOCKET

94-1650. Jackson v. Plainville Concrete, Inc.  
Clermont County, No. CA93-10-075. Reported at 74 Ohio St.3d 1481, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.  
Resnick, J., dissents.

95-375. Columbus Bar Assn. v. Schlosser.  
Reported at 74 Ohio St.3d 174, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration.  
Motion denied.  
Douglas, Acting C.J., and Pfeifer, J., dissent.  
Moyer, C.J., not participating.

95-376. Columbus Bar Assn. v. Elsass.  
Reported at 74 Ohio St.3d 174, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration.  
Motion denied.

Wright and Pfeifer, JJ., dissent.  
Moyer, C.J., not participating.

95-1480. State v. Weigand.  
Tuscarawas County, No. 94AP050033. Reported at 74 Ohio St.3d 1482, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

95-1801. Martin v. Wayne Mut. Ins. Co.  
Wayne County, No. 2921. Reported at 74 Ohio St.3d 1482, \_\_\_ N.E.2d \_\_\_. On  
motion for reconsideration. Motion denied.

95-1944. State v. Kuehne.  
Hamilton County, No. C-940380. Reported at 74 Ohio St.3d 1482, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

Wright and Pfeifer, JJ., dissent.

#### DISCIPLINARY DOCKET

91-2500. Disciplinary Counsel v. Oglesby.  
On application of Geoffrey Lynn Oglesby for termination of probation.  
Application denied.

Cook, J., would also immediately impose a six-month suspension.  
Resnick and Pfeifer, JJ., dissent and would grant the application.

92-419. Disciplinary Counsel v. McMahon.  
On motion for an order to appear and show cause. Motion granted.

#### MISCELLANEOUS DOCKET

95-2421. In re Application of White.  
The recommendation of the Board of Commissioners on Character and Fitness is  
approved.