

01/29/97

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

January 29, 1997

MERIT DOCKET

96-2585. Coleman v. Ohio Adult Parole Auth.
Franklin App. No. 96APE03-353. On motion to dismiss and on
motion for hearing on appellee's motion to dismiss. Sua sponte,
cause dismissed.

Moyer, C.J., Douglas, Resnick, Cook and Lundberg Stratton,
JJ., concur.

F.E. Sweeney, J., would grant the motion to dismiss and
deny the motion for hearing.

Pfeifer, J., would deny the motion to dismiss and deny the
motion for hearing.

96-2626. State ex rel. Silva v. Court of Common Pleas of Henry
Cty.

In Procedendo. Sua sponte, cause dismissed.

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

96-2632. Robinson v. Mengel.

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

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

Cook, J., dissents.

96-2675. State ex rel. Spillman v. Franklin Cty. Prosecutor's
Office.

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

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

96-2696. State ex rel. Rogers v. Sutula.

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

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

96-2711. State ex rel. Justice v. Reece.
In Mandamus and Prohibition. On motion to dismiss or motion for summary judgment, and on motion to amend complaint. Motion to dismiss sustained. Cause dismissed.

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

96-2721. State ex rel. Pena v. Court of Common Pleas of Lucas Cty.

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

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

96-2735. State ex rel. Timson v. Herbert.

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 Lundberg Stratton, JJ., concur.

96-2754. Humphrey v. Brigano.

In Habeas Corpus. Sua sponte, cause dismissed.

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

96-2794. McMillan v. State.

In Habeas Corpus. Sua sponte, cause dismissed.

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

96-2858. Lemaster v. Wingard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

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

96-2293. In re Gottesman.
Warren App. No. CA95-12-115.

96-2397. State v. Pannell.
Wayne App. No. 96CA0009.
Douglas, J., dissents.

96-2402. State v. Hagan.
Allen App. No. 1-96-48.

96-2405. State v. Johnson.
Franklin App. No. 96APA03-371.

96-2419. State v. Esqueda.
Franklin App. No. 96APA01-118.

96-2421. State v. Shaffer.
Hardin App. No. 6-95-23.

Moyer, C.J., dissents.

96-2422. Croftcheck v. Croftcheck.
Cuyahoga App. No. 68140.

Resnick, J., dissents.

96-2425. State v. Wood.
Cuyahoga App. No. 70150.

96-2426. Brown v. Ohio Bur. of Emp. Serv.
Marion App. No. 9-96-25.

96-2438. State v. Simms.
Cuyahoga App. No. 69314.

Resnick, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

96-2446. Steers v. Cincinnati.
Hamilton App. No. C-940946.

96-2448. State v. Baird.
Franklin App. No. 96APA03-286.

96-2452. State v. Auxier.
Erie App. No. E-95-050.

96-2457. State v. Emanuel.
Franklin App. No. 96APA01-59.

96-2458. Laborers' Internatl. Union of N. Am. Natl./Indus.
Pension Fund v. D.O.D. Contracts, Inc.
Jackson App. No. 95CA773.

96-2465. Washington v. Washington.
Cuyahoga App. No. 70132.

96-2469. In re Carroll.
Greene App. No. 95CA62. On motion for admission pro hac vice of
David E. Gordon by John H. Rion, and on motion to strike
exhibits "C" & "D" of memorandum in support of jurisdiction.
Motions denied.

96-2476. State v. McCabe.
Washington App. No. 94CA41.

96-2482. Walczak v. Van Dorn Co.
Cuyahoga App. No. 69970.

96-2497. State v. Bachman.
Stark App. No. 1995CA00266.

96-2504. State v. Gardner.
Fairfield App. No. 96CA4.

96-2507. State v. Bennett.
Miami App. No. 96CA9.
Douglas, J., dissents.

96-2514. McGuire v. Ohio Dept. of Rehab. & Corr.

Franklin App. No. 96API04-444.

96-2520. State v. Grohowshi.
Lucas App. No. L-95-292.
Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

96-2525. Fairfield Park v. Barefoot Grass Lawn Serv., Inc.
Cuyahoga App. No. 69947.
Douglas, J., dissents.

96-2528. State v. Klosterman.
Greene App. No. 96CA6.
Moyer, C.J., and Resnick, J., dissent.

96-2529. In re McCarty.
Union App. No. 14-96-21.
Moyer, C.J., and Cook, J., dissent.

96-2539. State v. New.
Lake App. No. 95-L-104.

96-2544. Cokonougher v. Loring.
Hocking App. No. 95CA17.

96-2552. Caldwell v. Alston.
Hamilton App. No. C-950688.

96-2556. In re Shawn W.
Lucas App. No. L-95-267.
Pfeifer, J., dissents.
Resnick, J., not participating.

96-2558. State v. Logan.
Cuyahoga App. No. 69535.

96-2559. State v. Wilson.
Cuyahoga App. No. 69751.

96-2568. State v. McGowan.
Cuyahoga App. No. 68971.

96-2569. Reeves v. Greene.
Lawrence App. No. 96CA21.
Moyer, C.J., and Douglas, J., dissent.

96-2573. State v. Melchor.
Williams App. No. WM96004.
Douglas, J., dissents.

96-2590. State v. Hattie.
Stark App. No. 1996CA00210.

96-2591. State v. Johnson.
Hamilton App. No. C-960727.

96-2592. State v. Wright.
Cuyahoga App. No. 70103.

96-2612. State v. Parks.
Clark App. No. 95CA0050.

96-2644. State v. Beane.
Champaign App. No. 90CA13.

96-2646. State v. Smallwood.
Butler App. No. CA95-12-209.

96-2659. State v. Madaris.
Hamilton App. No. C-960732.

96-2714. State v. Bekovich.
Cuyahoga App. Nos. 50058 and 50068.

MOTION DOCKET

95-595. State ex rel. Capitol Materials Co. v. Trimble.
Franklin App. No. 94APD02-138. On motion to advance case on docket. Motion denied.

Lundberg Stratton, J., also notes that the motion is moot.

Douglas, Resnick and F.E. Sweeney, JJ., dissent and would grant the motion.

96-249. Frank A. Rulli, F.A.R. Foods, Inc. v. Fan Co.
Mahoning App. No. 94 C.A. 14. On motion to participate in oral argument. Motion denied.

Douglas, J., dissents.

96-1828. Justice v. Hurley.
Franklin App. No. 95APD07-918. On motion to strike appendix to reply brief and argument related thereto. Motion granted.

Pfeifer, J., dissents.

Lundberg Stratton, J., not participating.

96-2006. Minton v. Honda of Am. Mfg., Inc.
Montgomery App. No. 14949. On motion for admission pro hac vice of Larry E. Coben by Robert W. Kerpsack. Motion granted.

96-2025. Minton v. Honda of Am. Mfg., Inc.
Montgomery App. No. 14949. On motion for admission pro hac vice of Larry E. Coben by Robert W. Kerpsack. Motion granted.

96-2498. State ex rel. Fite v. Aeh.
In Mandamus. On answer of respondent and on motion for judgment on the pleadings. Sua sponte, alternative writ granted.

96-2654. Cambridge Arms, Ltd. v. Hamilton Cty. Bd. of Revision.
Board of Tax Appeals, No. 94-P-1129. On motion to consolidate case with 96-2655, Cambridge Arms II, Ltd. v. Hamilton Cty. Bd. of Revision, Board of Tax Appeals, No. 94-P-1130. Motion granted.

96-2742. State v. Greene.
Scioto App. No. 94CA2297. On motion for leave to file delayed appeal. Motion granted.

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

96-2757. State v. Watkins.

Franklin App. No. 96APA05-635. On motion for leave to file delayed appeal. Motion denied.

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

Lundberg Stratton, J., not participating.

96-2778. Robinson v. B.O.C. Group, Gen. Motors Corp.

Trumbull App. No. 96-T-5419. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issues stated in the court of appeals' Judgment Entry filed November 26, 1997:

"When an employer has appealed a decision of the Industrial Commission to a court of common pleas under R.C. 4123.512, can the court of common pleas subsequently grant a motion to voluntarily dismiss the employee's complaint without prejudice under Civ.R. 41(A)(2)?"

F.E. Sweeney, J., dissents.

96-2790. State v. Clemons.

Hamilton C.P. No. B9511119. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

96-2799. State v. Cummings.

Cuyahoga App. No. 69966. On motion for leave to file delayed appeal. Motion granted.

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

96-2800. State v. Ledbetter.

Greene App. No. 95CA04. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

96-2801. State v. Bagley.

Franklin App. Nos. 96APA04-554 and 96APA05-614. On motion for leave to file delayed appeal. Motion granted.

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

96-2839. State v. Towns.

Franklin App. No. 95APA11-1496. On motion for leave to file delayed appeal. Motion denied.

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

96-2840. State v. Watson.

Summit App. No. 17641. On motion for leave to file delayed appeal. Motion denied.

Resnick and Pfeifer, JJ., dissent.

96-2855. State v. Perkins.

Jackson App. No. 96CA792. On motion for leave to file delayed appeal. Motion granted.

Douglas, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

96-2888. State v. Parsons.

Greene App. No. 96CA20. On motion for leave to file delayed

appeal. Motion granted.
F.E. Sweeney, J., dissents.

97-6. State v. Rooney.
Butler App. No. CA96-01-020. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issues stated in the court of appeals' Decision and Entry Denying Motion for Reconsideration and Granting Motion for Certification, filed December 3, 1996:

"[W]e find that our decision in Rooney is in conflict with [State v.] Adams [(1992), 73 Ohio App.3d 735, 598 N.E.2d 176]. Therefore, the state's motion for certification is hereby GRANTED. The questions for certification are as follows:

"1. Whether the state must perform separate RFI surveys on the HF, VHF, and UHF radio bands in order to substantially comply with Ohio Adm.Code 3701-53-02(C).

"2. Whether the defendant must demonstrate that RFI was actually present and affected the reliability of his breath test before the results of the breath test may be suppressed because of the state's failure to substantially comply with Ohio Adm.Code 3701-53-02(C).

"IT IS SO ORDERED."

Pfeifer, J., dissents.

Sua sponte, cause consolidated with 96-2499, infra.

97-11. Smith v. Ohio Dept. of Human Serv.
Clermont App. No. CA96-05-045. On motion for stay. Motion denied.

97-14. J.A. Croson Co. v. J.A. Guy, Inc.
Pickaway App. No. 95CA10. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the following issue:

"Whether federal labor law preempts a claim that a union employer's deduction of union dues for a union 'Industry Advancement' or 'job targeting' fund violates Ohio's Prevailing Wage Law, R.C. 4115.01 et seq., and state regulations adopted thereunder."

97-70. Knies v. Bob Roark Floor Coverings.
Miami App. No. 96CA23. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, J., dissents.

DISCRETIONARY APPEALS ALLOWED

96-2442. Richwalsky v. ABF Freight Sys., Inc.
Hamilton App. No. C-960064. Sua sponte, cause held for the decision in 96-2634, infra, and 96-2778, supra; briefing schedule stayed.

96-2490. Miami Twp. Bd. of Trustees v. Fraternal Order of Police Ohio Labor Council, Inc.
Montgomery App. No. 15930.

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

96-2499. State v. Rooney.

Butler App. No. CA96-01-020. Discretionary appeal allowed on Proposition of Law No. I.

Moyer, C.J., concurs.

Resnick, F.E. Sweeney and Lundberg Stratton, JJ., would allow the discretionary appeal on all propositions of law.

Douglas, Pfeifer and Cook, JJ., dissent and would not allow the discretionary appeal.

96-2511. Chubb v. Ohio Bur. of Workers' Comp.

Franklin App. No. 96APE03-292.

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

96-2578. J.A. Croson Co. v. J.A. Guy, Inc.

Pickaway App. No. 95CA10. Sua sponte, cause consolidated with 97-14, supra.

Cook, J., dissents.

96-2634. Robinson v. B.O.C. Group, Gen. Motors Corp.

Trumbull App. No. 96-T-5419. Sua sponte, cause consolidated with 96-2778, supra.

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

DISCRETIONARY APPEALS NOT ALLOWED

96-2424. In re Petition for Annexation of 75.14 Acres of Land by Wiechel.

Clermont App. No. CA96-02-013.

96-2430. Hoeffel v. Henry Cty. Bd. of Commrs.

Henry App. No. 7-95-9.

96-2447. Cincinnati Ins. Co. v. Quikrete Cos.

Franklin App. No. 96APE04-424. On discretionary appeal and discretionary cross-appeal by Cincinnati Insurance Company. Appeals denied.

Moyer, C.J., Douglas and Lundberg Stratton, JJ., dissent.

96-2449. Rae v. Geier.

Darke App. No. 1393.

Douglas, J., dissents.

96-2460. Long v. Tokai Bank of California.

Montgomery App. No. 15748.

Douglas and Resnick, JJ., dissent.

96-2489. State v. Gibbs.

Washington App. No. 96CA28.

96-2503. Myers v. Oberlin Processing, Inc.

Seneca App. No. 13-96-20.

F.E. Sweeney, J., dissents.

96-2508. Williams v. Univ. of Cincinnati Alcoholism Ctr.

Franklin App. No. 96API04-467.

96-2510. Wray v. Martin Media, Inc.

Hamilton App. No. C-960250.

Douglas, J., dissents.

96-2512. State v. Morris.
Hamilton App. No. C-960704.

96-2517. Evans v. Kissack.
Licking App. No. 95CA102.

96-2522. Martin v. Schregardus.
Franklin App. Nos. 96APH04-433 and 96APH04-434.
Moyer, C.J., Douglas and Lundberg Stratton, JJ., dissent.

96-2523. Martin v. Gen. Motors Corp.
Trumbull App. No. 96-T-5387.
Douglas and Resnick, JJ., dissent.

96-2524. Jennings v. Dayton.
Montgomery App. No. 15670.
Lundberg Stratton, J., dissents.

96-2526. Bank One, Steubenville, NA v. Buckeye Union Ins. Co.
Jefferson App. No. 95JE29.

96-2527. Reece v. Miami Cty. Mun. Court.
Miami App. No. 96CA3.
Douglas and Resnick, JJ., dissent.
96-2530. N. Cent. Loc. Edn. Assn. v. N. Cent. Loc. School Dist.
Bd. of Edn.
Wayne App. No. 96CA0011.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-2531. Century Surety Co. v. Berrodin.
Summit App. No. 17784.

96-2532. Atlantic Mut. Ins. Co. v. Ayer Elec., Inc.
Hamilton App. No. C-950544.
Douglas, J., dissents.

96-2533. Boone v. Richards Elec. Supply Co.
Hamilton App. No. C-960034.
Douglas and Resnick, JJ., dissent.

96-2541. Convenient Food Mart #350, Inc. v. Cincinnati Ins. Co.
Trumbull App. No. 96-T-5414.

96-2548. McCrystal v. Trumbull Mem. Hosp.
Trumbull App. No. 94-T-5055.
Lundberg Stratton, J., dissents.

96-2549. Kirkendall v. Parker-Hannifin Corp.
Lorain App. No. 96CA006372.

96-2553. Smith v. Papp.
Cuyahoga App. No. 69733.

96-2554. State v. Miley.
Ross App. No. 95CA2168.

96-2593. Gulick v. Costain Coal, Inc.
Coshocton App. No. 95CA24.

96-2596. Dimora v. Cleveland Clinic Found.
Cuyahoga App. Nos. 70092 and 70516.
Moyer, C.J., dissents.

RECONSIDERATION DOCKET

96-285. State v. Eley.
Mahoning App. No. 87 C.A. 122. Reported at 77 Ohio St.3d 174,
___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-1382. Hughes v. Cleveland.
Cuyahoga App. No. 68869. Reported at 77 Ohio St.3d 1469, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

96-1546. Am. Express Travel Related Serv. v. Mandilakis.
Cuyahoga App. No. 68783. Reported at 77 Ohio St.3d 1481, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.

96-1572. VFW Post 4235 v. Ohio Liquor Control Comm.
Miami App. No. 95CA42. Reported at 77 Ohio St.3d 1471, ___
N.E.2d ___. On motion for reconsideration. Motion granted and
discretionary appeal allowed; sua sponte, cause held for the
decision in 96-1270 and 96-1271, VFW Post 1238 v. Ohio Liquor
Control Comm., Huron App. No. H-95-065; briefing schedule
stayed.
Douglas, Resnick and Pfeifer, JJ., dissent.

96-1592. AirTouch Paging v. Tracy.
Franklin App. No. 95APE11-1549. Reported at 77 Ohio St.3d 1471,
___ N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., F.E. Sweeney and Pfeifer, JJ., dissent.

96-1664. State ex rel. Hall v. Anderson.
Richland App. No. 96CA50. Reported at 77 Ohio St.3d 1472, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

96-1667. Jacob v. Grant Life Choices Fitness Ctr.
Franklin App. No. 95APE12-1633. Reported at 77 Ohio St.3d 1482,
___ N.E.2d ___. On motion for reconsideration. The motion
fails for want of four votes on the following vote:
Moyer, C.J., Cook and Lundberg Stratton, JJ., vote no.
Douglas, F.E. Sweeney and Pfeifer, JJ., vote yes.
Resnick, J., not participating.

96-1717. Paylides v. Niles Gun Show, Inc.
Stark App. No. 1995CA00207. Reported at 77 Ohio St.3d 1473, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., and Lundberg Stratton, JJ., dissent.
On motion for leave to file brief amicus curiae for
reconsideration. Motion denied.
Lundberg Stratton, J., dissents.

96-1830. McBroom v. Franklin Cty. Bd. of Elections.

Franklin App. No. 96APE01-53. Reported at 77 Ohio St.3d 1485, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-1861. Kniskern v. Somerford Twp.

Franklin App. Nos. 95API09-1164 and 95API09-1169. Reported at 77 Ohio St.3d 1485, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

96-1872. Goettenmoeller v. Meridian Mut. Ins. Co.

Franklin App. No. 95APE11-1553. Reported at 77 Ohio St.3d 1486, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

Lundberg Stratton, J., not participating.

96-1935. Green v. Toledo Hosp.

Lucas App. No. L-96-133. Reported at 77 Ohio St.3d 1493, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

Resnick, J., not participating.

96-1988. State v. Hopfer.

Montgomery App. No. 15345. Reported at 77 Ohio St.3d 1488, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

96-2005. Wayne Mut. Ins. Co. v. Mills.

Wayne App. No. 95CA0083. Reported at 77 Ohio St.3d 1494, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

96-2055. Nationwide Mut. Ins. Co. v. Finkley.

Summit App. No. 17544. Reported at 77 Ohio St.3d 1494, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Resnick, J., dissents.

Cook, J., not participating.