

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

May 20, 1998

MERIT DOCKET

98-535. State ex rel. Sevayega v. Pokorny.

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.

98-589. State ex rel. McCool 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 and Cook, JJ., concur.

Lundberg Stratton, J., dissents and would grant the writ.

98-660. Gerhart v. Mohr.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

98-667. Griffin v. Karnes.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

98-728. Roberts v. Russell.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

98-790. State ex rel. Levon v. Fairfield Cty. Court of Common Pleas.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-836. State ex rel. Montgomery v. O'Grady.

In Mandamus and Prohibition. *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**

97-2330. State v. Perry.

Washington App. No. 96CA10.

97-2718. State v. Walsh.

Union App. No. 14-97-20.

98-305. Smith v. Shelby Ins. Group.

Trumbull App. Nos. 96-T-5547 and 96-T-5566. (Appeal of Willie Smith and conditional cross-appeal of Shelby Mutual Insurance Company.)

98-429. State v. Hunter.

Cuyahoga App. Nos. 70933 and 70934.

98-431. State v. Bell.

Madison App. No. CA96-07-027.

98-432. State v. Alford.

Montgomery App. No. 16528.

98-438. State v. Grove.

Hamilton App. No. C-960839.

98-444. Gunlock v. Green Twp. Trustees.

Ross App. No. 97CA2270.

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

98-456. State v. Hurst.

Stark App. No. 1997CA00070.

98-468. State v. Ferguson.

Ashtabula App. No. 97-A-0074. On motion for release on personal recognizance and motion to strike notice of appeal and memorandum in support of jurisdiction. Motions denied.

98-471. Waterville v. Reynolds.

Lucas App. No. L-97-1056.

Resnick, J., dissents.

98-482. State v. Mortemore.

Wood App. No. WD-98-007.

Resnick, J., not participating.

98-484. State v. Bean.

Montgomery App. No. 16438.

98-485. State v. Mitchell.

Hamilton App. No. C-910485.

Lundberg Stratton, J., dissents.

98-486. State v. Perry.

Trumbull App. No. 96-T-5428.

98-492. State v. Lemons.
Cuyahoga App. No. 71644.

98-493. H & S Financial v. Arbino.
Hamilton App. No. C-970267.

98-506. State v. Hoskins.
Clark App. No. 97CA39.

98-507. State v. Talley.
Montgomery App. No. 16479.

98-511. Courtney v. Taylor.
Hamilton App. No. C-970034.
Lundberg Stratton, J., dissents.

98-514. State v. Anese.
Seneca App. No. 13-97-52.
Resnick, J., dissents.

98-515. State v. Bays.
Greene App. No. 96CA118.
Resnick, J., dissents.

98-518. State v. Smith.
Lorain App. No. 97CA006739.
Moyer, C.J., Resnick and Pfeifer, JJ., dissent.

98-523. State v. Farris.
Erie App. No. E-95-052.
Resnick, J., not participating.

98-524. State v. Ingram.
Montgomery App. No. 16783.
Moyer, C.J., and Lundberg Stratton, J., dissent.

98-525. State v. Osorio.
Cuyahoga App. No. 72147.

98-527. State v. Swiger.
Summit App. Nos. 17864 and 18416.
Pfeifer, J., dissents.

98-529. Brock v. Gen. Elec. Co.
Hamilton App. No. C-970042.
Douglas, J., dissents.
Resnick, J., not participating.

98-530. State v. Wooden.
Summit App. No. 18448.

98-534. Burch v. Akron Hous. Appeals Bd.
Summit App. No. 18470.

98-539. State v. Salazar.
Sandusky App. No. S-98-008.

98-540. Earley v. Cuyahoga Metro. Hous. Auth.
Cuyahoga App. No. 73003.

98-544. Alco Industries, Inc. v. Zarlenga Industries, Inc.
Stark App. No. 97CA00065.
Pfeifer, J., dissents.

98-548. State v. Niehaus.
Hamilton App. No. C-970066.

98-553. State v. Redden.
Cuyahoga App. No. 72166.

98-559. State v. Poland.
Stark App. No. 96CA0334.
Pfeifer, J., dissents.

98-561. State v. Langenbach.

Hamilton App. Nos. C-971105, C-971111 and C-971114.

98-563. State v. Abuhilwa.

Summit App. Nos. 18444 and 18620.

98-568. State v. Stayton.

Hamilton App. No. C-970172.

98-569. State v. Monzo.

Franklin App. No. 97APA04-481.

98-571. Doe v. Rupp.

Cuyahoga App. Nos. 71938 and 72966.

Pfeifer and Lundberg Stratton, JJ., dissent.

98-576. State v. Langston.

Cuyahoga App. No. 71578.

98-577. State v. Brown.

Preble App. No. CA97-07-017.

98-578. State v. Kokal.

Montgomery App. No. 16556.

98-581. State v. Lee.

Summit App. No. 18441.

Cook, J., dissents.

98-582. Livingston v. Diocese of Cleveland.

Cuyahoga App. No. 72137.

Lundberg Stratton, J., dissents.

98-584. Spear v. Moreland Hills.

Cuyahoga App. No. 72007.

98-585. Wellman Seeds, Inc. v. Delphos.

Van Wert App. No. 15-98-2.

98-586. Hamisfar v. Baker Concrete Constr. Co.

Hamilton App. No. C-970228.

Douglas, J., dissents.

98-599. McCurdy v. Cleveland Bd. of Zoning Appeals.

Cuyahoga App. No. 71935.

Lundberg Stratton, J., dissents.

98-601. State v. Whalen.

Hamilton App. No. C-961094.

98-602. Hall v. Trapper John's Canoe Livery, Inc.

Franklin App. No. 96APE04-519.

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

98-610. Bentley v. Cuyahoga Falls Bd. of Edn.

Summit App. No. 18512.

98-612. Stevens v. Finley.

Montgomery App. No. 16856.

98-613. Carter v. Consol. Rail Corp.

Franklin App. No. 97APE08-990. Discretionary appeal denied and motion for admission *pro hac vice* of Thomas J. Sweeney denied.

Douglas and Pfeifer, JJ., dissent.

98-624. State v. Haynes.

Summit App. No. 17865.

98-628. State v. Snyder.

Ross App. No. 97CA2293.

98-637. State v. Watson.

Butler App. No. CA97-07-145.

98-645. State v. Wesseler.
Butler App. No. CA96-07-131.

98-661. State v. Cheatham.
Summit App. No. 18245.

MOTION DOCKET

95-1792. State ex rel. Colliver v. Indus. Comm.
Franklin App. No. 94APD05-684. On request for oral argument. Request granted.
F.E. Sweeney, J., dissents.

97-2350. State ex rel. Beverly v. Eighth Dist. Court of Appeals.
In Mandamus. On motion to vacate. Motion denied.

97-2522. State ex rel. Zolnai v. Indus. Comm.
Franklin App. No. 96APD08-1101. On motion to dismiss. Motion denied.

98-30. MCI Telecommunications Corp. v. Pub. Util. Comm.
Public Utilities Commission, No. 96-336-TP-CSS. On motion for leave to intervene of Ameritech Ohio. Motion granted.
Resnick, J., not participating.

98-188. State v. Jordan.
Lucas App. No. L-97-1323. On motion for leave to file delayed appeal. Motion denied.
Moyer, C.J., dissents.
Resnick, J., not participating.

98-207. Tanzi v. Nahigian.
Cuyahoga App. No. 71872. On motion of Patrick J. Murphy to withdraw as counsel. Motion granted.

98-603. State v. Lance.

Hamilton App. No. C-970301. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause consolidated with 98-605, *infra*, and held for the decision in 97-1985, *State v. Cook*, Allen App. No. 1-97-21; briefing schedule stayed.

98-606. State v. Towe.

Hamilton App. No. C-970283. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause consolidated with 98-604, *infra*, and held for the decision in 97-1985, *State v. Cook*; Allen App. No. 1-97-21; briefing schedule stayed.

98-609. State v. Walkup.

Morgan App. No. CA9606. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

98-623. State v. Smith.

Paulding App. No. 11-97-14. On motion for leave to file delayed appeal. Motion denied.

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

98-625. State v. Burns.

Montgomery App. No. 11216. On motion for leave to file delayed appeal. Motion denied.

98-627. State v. Simms.

Cuyahoga App. No. 69314. On motion for leave to file delayed appeal. Motion denied.

98-633. State v. Pettigrew.

Cuyahoga App. No. 70158. On motion for leave to file delayed appeal. Motion denied.

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

98-638. State v. Pinkard.

Montgomery App. No. 15457. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

98-776. Coles v. Ohio Bur. of Emp. Serv.

Montgomery App. No. 16716. On motion for stay. Motion denied.

98-795. In re Edwards.

Cuyahoga App. No. 72473. On motion for stay. Motion denied.

98-811. Tiemann v. Univ. of Cincinnati.

Franklin App. No. 97API10-148. On motion to lift stay, motion to reinstate injunction, and motion to expedite consideration of case. Motions denied.

98-819. Columbus v. Link.

Franklin App. No. 97APC09-1214. On motion to continue stay. Motion denied.

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

DISCRETIONARY APPEALS ALLOWED

98-366. McNamara v. Rittman.

Wayne App. No. 97CA0003. (Appeal of Harry and Alveta McNamara et al. and cross-appeal of the city of Rittman.)

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

98-469. Colvin v. Abbey's Restaurant, Inc.

Summit App. Nos. 18196 and 18197.

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

98-526. State v. Pierce.

Franklin App. No. 97APA06-810.

Douglas, Resnick and Pfeifer, JJ., dissent.

98-570. Perkins v. Norwood City Schools.

Hamilton App. No. C-970015.

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

98-604. State v. Towe.

Hamilton App. No. C-970283.

Resnick, Pfeifer and Cook, JJ., dissent.

98-605. State v. Lance.

Hamilton App. No. C-970301.

Resnick, Pfeifer and Cook, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

97-2294. RMI Titanium Co. v. Occidental Chem. Corp.

Cuyahoga App. Nos. 71471, 71486 and 71487.

Moyer, C.J., and F.E. Sweeney, J., dissent.

Cook, J., not participating.

98-455. Costa v. Hardee's Food Sys.

Warren App. No. CA97-03-022.

98-472. Sanchez v. Canton.

Stark App. No. 1997CA00187.

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

98-491. State v. Goodman.

Stark App. No. 1997CA00171.

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

98-502. Brandon/Wiant Co. v. Teamor.

Cuyahoga App. No. 72040.

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

98-503. In re Boylan.

Butler App. No. CA97-04-088.

98-510. Johnson v. A.R.E., Inc.

Wayne App. Nos. 97CA0005, 97CA0006, 97CA0012 and 97CA0013.
Douglas and Resnick, JJ., dissent.

98-521. State v. Trivett.

Hamilton App. No. C-970299.

98-531. State v. Adams.

Hamilton App. No. C-970898.

98-537. State v. Sherritt.

Montgomery App. No. 16389.
Lundberg Stratton, J., dissents.

98-545. Darulis v. Ayres.

Stark App. No. 96CA398.

98-562. Dayton Hudson Corp., Target Store Div. v. Washington Twp. Bd. of Trustees.

Montgomery App. Nos. CA 16691 and CA 16707.

98-594. Herdman v. BP Am., Inc.

Franklin App. No. 97APE12-1664.

98-643. Plain Twp. Trustees v. Kania.

Wood App. No. WD-97-020.
Lundberg Stratton, J., dissents.

RECONSIDERATION DOCKET

96-2706. In re Washington.

Cuyahoga App. No. 69283. Reported at 81 Ohio St.3d 337, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

97-517. George v. Ohio Bur. of Workers' Comp.

Montgomery App. No. 16081. Reported at 81 Ohio St.3d 1258, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-1517. State ex rel. Grove v. Nadel.

Hamilton App. No. C-970324. Reported at 81 Ohio St.3d 325, ___ N.E.2d _____. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

98-59. Univ. Mednet v. Blue Cross & Blue Shield of Ohio.

Cuyahoga App. No. 71172. Reported at 81 Ohio St.3d 1502, ___ N.E.2d _____. On motion for reconsideration. Motion granted; *sua sponte*, discretionary appeal allowed.
Moyer, C.J., Pfeifer and Cook, JJ., dissent.

98-108. Bedford Hts. v. Nieminen.

Cuyahoga App. No. 71826. Reported at 81 Ohio St.3d 1495, ___ N.E.2d _____. On motion for reconsideration. Motion denied.
Douglas and F.E. Sweeney, JJ., dissent.

98-129. State v. Koch.

Erie App. No. E-97-005. Reported at 81 Ohio St.3d 1496, ___ N.E.2d _____. On motion for reconsideration. Motion denied.
Resnick, J., not participating.

98-133. Valot v. Southeast Local School Dist. Bd. of Edn.

Portage App. No. 96-P-0280. Reported at 81 Ohio St.3d 1496, ___ N.E.2d _____. On motion for reconsideration. Motion denied.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

98-185. Silvers v. Elco Steel Co.

Fayette App. No. CA97-06-016. Reported at 81 Ohio St.3d 1502, ___ N.E.2d _____. On motion for reconsideration. Motion denied.
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

98-193. Gaves v. Cabi.

Trumbull App. Nos. 96-T-5506, 96-T-5537 and 97-T-0026. Reported at 81 Ohio St.3d 1503, ___ N.E.2d _____. On motion for reconsideration. Motion denied.

98-215. State v. Garner.

Hamilton App. No. C-960995. Reported at 81 Ohio St.3d 1497, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.