

**SUPREME COURT OF OHIO**

**COLUMBUS**

**ANNOUNCEMENT**

9:00 A.M.

WEDNESDAY  
April 7, 1999

**MERIT DOCKET**

**99-232. State ex rel. McGilvery v. Caltrider.**

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.

**99-272. State ex rel. Chesney v. Columbiana Cty. Bd. of Commrs.**

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.

**99-303. State ex rel. Williams v. Cuyahoga Cty. Clerk of Courts.**

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.

**99-306. State ex rel. North v. Cissell.**

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.

**99-376. Davis v. Ohio Adult Parole Auth.**

In Prohibition. 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.

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

**98-2202. State v. Sybert.**

Lucas App. No. L-96-337.

**98-2486. State v. Parker.**

Trumbull App. No. 97-T-0116.

**98-2595. State v. Wheatley.**

Cuyahoga App. No. 72422.

**98-2620. State v. Dieter.**

Seneca App. No. 13-98-6.

Resnick and Pfeifer, JJ., dissent.

**98-2644. Deen v. State.**

Montgomery App. No. 17109.

**98-2646. Kirksey Muhammad v. Marc Glassman, Inc.**

Cuyahoga App. No. 72520.

**98-2649. Anderson v. Anderson.**

Holmes App. No. CA11.

**98-2666. Cohen v. Ohio Dept. of Taxation.**

Cuyahoga App. No. 74614.

**98-2689. State v. Johnson.**  
Cuyahoga App. No. 57790.

**98-2691. State v. Padgett.**  
Cuyahoga App. No. 72504.

Moyer, C.J., dissents and would hold this cause for the decision in 98-2603,  
*State v. Edmonson*, Portage App. No. 97-P-0067.

**98-2692. State v. Reif-Hill.**  
Cuyahoga App. No. 72864.

Lundberg Stratton, J., dissents.

**98-2693. State v. Taylor.**  
Cuyahoga App. No. 71396.

Moyer, C.J., dissents.

**98-2700. Brook v. Seidner.**  
Cuyahoga App. No. 73648.

**98-2702. State v. Lugo.**  
Licking App. No. 98CA00023.

**98-2703. State v. Lister.**  
Lucas App. No. L-98-1252.  
Resnick, J., not participating.

**98-2705. State v. Ross.**  
Erie App. No. E-97-053.

**98-2711. State v. Dorsey.**  
Summit App. No. 19012.

**98-2713. State v. Kinney.**  
Ashland App. No. 98COA01262.

**98-2714. State v. Flowers.**  
Medina App. No. 2842-M.

**98-2717. State v. Isome.**

Hamilton App. No. C-980149.

**98-2719. Lodi v. Moore.**

Medina App. No. 2835-M.

**98-2721. State v. Johnson.**

Scioto App. No. 98CA2606.

**98-2724. State v. McGlaughlin.**

Summit App. No. 19019.

**98-2727. State v. Sullivan.**

Cuyahoga App. Nos. 72878 and 72879.

**98-2728. Cappelli v. Cappelli.**

Mahoning App. No. 97CA15.

Lundberg Stratton, J., dissents.

**99-1. Mainwold Bros., Inc. v. Ziarno.**

Lucas App. No. L-97-1429.

**99-3. Cleveland v. Bacsa.**

Cuyahoga App. No. 73519.

Moyer, C.J., dissents.

**99-5. Atlantic Tool & Die v. Kacic.**

Medina App. No. 2717-M.

Resnick and Pfeifer, JJ., dissent.

**99-10. State v. Georgekopoulos.**

Summit App. No. 18797.

Resnick, J., dissents.

**99-15. State v. Ferris.**

Franklin App. No. 98AP-24.

**99-17. In re Parker.**

Hamilton App. No. C-970818.

Resnick and Lundberg Stratton, JJ., dissent.

**99-18. State v. Hamm.**

Hamilton App. No. C-970435.

**99-19. State v. Neville.**

Hamilton App. No. C-980499.

**99-20. State v. Beaver.**

Trumbull App. No. 97-T-0205.

**99-21. State v. Dawson.**

Summit App. No. 19351.

Lundberg Stratton, J., dissents.

**99-24. State v. Keith.**

Cuyahoga App. No. 72275.

**99-26. Uncrop v. Klein.**

Cuyahoga App. Nos. 74532 and 74619.

Lundberg Stratton, J., dissents.

**99-27. State v. Pearson.**

Seneca App. No. 13-98-16.

**99-28. Meredith v. Meredith.**

Lake App. No. 97-L-255.

**99-30. State v. Malone.**

Franklin App. No. 98AP-278. On appeal of state of Ohio. Appeal denied.

Resnick and Lundberg Stratton, JJ., dissent.

On cross-appeal of Frederick D. Malone, Jr. Cross-appeal denied.

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

**99-31. State v. Tornstrom.**

Cuyahoga App. No. 72898.

**99-36. Reed v. Morgan.**

Huron App. No. H-98-021. On appeal of Joseph D. Reed and appeal of Mitchell Adams. Appeals denied.

Douglas and Pfeifer, JJ., dissent.

Resnick, J., not participating.



**99-38. State ex rel. Schott v. E. Ohio Gas Co.**

Summit App. No. 19078.

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

Cook, J., not participating.

**99-45. Stefanov v. Personal Serv. Ins. Co.**

Cuyahoga App. No. 73590.

**99-46. Childs v. Kinder.**

Butler App. No. CA98-01-009.

Resnick, J., dissents.

**99-47. Stefanov v. Personal Serv. Ins. Co.**

Cuyahoga App. No. 73589.

**99-48. State v. Ayers.**

Montgomery App. No. 16851.

**99-50. Bell v. Union.**

Montgomery App. No. CA17143.

**99-51. State v. Roberts.**

Guernsey App. No. 97CA29.

**99-53. Bruce v. Ontario.**

Richland App. Nos. 98CA122 and 98CA92.

Pfeifer, J., dissents.

**99-56. In re Abu-Ali.**

Cuyahoga App. No. 73489.

Resnick, J., dissents.

**99-57. State v. Awkal.**

Cuyahoga App. No. 73267.

**99-58. Lombardo v. Lombardo.**

Cuyahoga App. No. 72913.

Douglas and Pfeifer, JJ., dissent.

**99-62. State v. Musgrave.**

Summit App. No. 18260.

Cook, J., dissents.

**99-64. State v. Stribling.**

Cuyahoga App. No. 74715.

Lundberg Stratton, J., dissents.

**99-65. State v. Graham.**

Licking App. No. 97CA126.

F.E. Sweeney, J., dissents.

**99-66. In re Houston.**

Cuyahoga App. No. 73950.

**99-67. State v. Samuels.**

Cuyahoga App. No. 74677.

**99-69. Bennett v. Bank One, N.A.**

Van Wert App. No. 15-98-09.

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

**99-70. State v. Hunter.**

Ashland App. No. 98COA01242.

**99-72. State v. Nicholson.**

Warren App. Nos. CA98-04-040, CA98-04-043, CA98-05-053 and CA98-06-066.

Moyer, C.J., and Cook, J., would allow on Propositions of Law Nos. II and III.

**99-73. State v. Van Meter.**

Henry App. No. 7-98-02.

Resnick, J., dissents.

**99-77. Lelan v. Flinn.**

Franklin App. No. 98AP-363.

**99-80. Permanent Gen. Ins. Cos., Inc. v. Dressler.**

Hamilton App. No. C-980088.

- Moyer, C.J., and Cook, J., dissent.
- 99-81. State v. Justice.**  
Fairfield App. No. 98CA00038.
- 99-84. State v. Duncan.**  
Licking App. No. 97CA134.  
Pfeifer, J., dissents.
- 99-95. Scarberry v. Ohio State Univ. Hosp.**  
Franklin App. No. 98AP-143.  
Resnick and Pfeifer, JJ., dissent.
- 99-98. Summerfield v. Ohio State Dental Bd.**  
Licking App. No. 98CA00046.
- 99-100. State v. Beuke.**  
Hamilton App. No. C-970807.
- 99-108. State v. Miller.**  
Cuyahoga App. No. 75453.
- 99-109. State v. Hall.**  
Montgomery App. No. 17101.
- 99-110. State v. Lewis.**  
Cuyahoga App. No. 73736.  
Pfeifer, J., dissents.
- 99-119. State v. Jordan.**  
Cuyahoga App. No. 73478.
- 99-132. State v. Blankenship.**  
Summit App. No. 18871.
- 99-144. State v. Baker.**  
Stark App. No. 1997CA00362.
- 99-150. State v. Filiaggi.**  
Lorain App. No. 97CA006964.



**99-190. State v. Stewart.**  
Franklin App. No. 98AP-41.

**99-205. State v. Prowell.**  
Stark App. No. 1998CA00138.

**99-225. State v. Edighoffer.**  
Mahoning App. Nos. 96CA161 and 96CA162.

**99-230. State v. Watson.**  
Cuyahoga App. No. 73683.  
Douglas and Resnick, JJ., dissent.

**99-255. State v. Price.**  
Montgomery App. No. CA16591.

**99-334. State v. Walkup.**  
Morgan App. No. CA9606.

### **MOTION DOCKET**

**97-1117. Simmons-Harris v. Goff.**  
Franklin App. Nos. 96APE08-982 and 96APE08-991. On motion to file statement of additional authorities of John M. Goff, Superintendent, and state of Ohio, and on motion to file statement of additional authorities of John M. Goff et al. Motions denied.

Baird and Young, JJ., dissent.

William R. Baird, J., of the Ninth Appellate District, sitting for Cook, J.

William W. Young, J., of the Twelfth Appellate District, sitting for Lundberg Stratton, J.

**97-2344. In re Resignation of O'Neill.**  
On motion to withdraw as counsel. Motion granted.

**98-913. State v. Green.**  
Lucas C.P. No. 971450. The February 2, 1999 motion to supplement record with transcripts of pretrial hearings conducted on July 17, August 5, and August 12, 1997 is granted.

The February 2, 1999 motion to supplement record with documents filed in Lucas County Common Pleas case No. CR-97-1137 is denied.

The February 10, 1999 motion to supplement record with an October 15, 1997 deposition of Rosie Frusher is granted.

**98-1891. State v. Jones.**

Hamilton App. No. C-970043. On motion to return the record to the Hamilton County Court of Appeals pending ruling on App.R. 26(B) application for reopening. Motion denied. *Sua sponte*, this court directs the trial court to cooperate with the court of appeals by sharing its copy of the complete record with the court of appeals.

**98-1927. Madera v. Satellite Shelters, Inc.**

Cuyahoga App. No. 73172. On motion for admission *pro hac vice* of Marko J. Mrkonich and Ingrid Kreuser. Motion granted.

**98-1983. State v. LaMar.**

Lawrence App. No. 95CA31. On motion to withdraw as counsel. Motion denied; leave to file granted.

**98-2544. Reynoldsburg v. Licking Cty. Budget Comm.**

Board of Tax Appeals, Nos. 97-T-1518 and 97-T-1519. On motion to consolidate case with 98-2545, *infra*. Motion granted.

**98-2545. Reynoldsburg v. Licking Cty. Budget Comm.**

Board of Tax Appeals, Nos. 96-T-1436 and 96-T-1437. On motion to consolidate case with 98-2544, *supra*. Motion granted.

**98-2556. Ohio Edison v. Tracy.**

Board of Tax Appeals, No. 95-K-50. On motion to consolidate case with 98-2557, *infra*. Motion granted.

Cook, J., not participating.

**98-2557. Pennsylvania Power Co. v. Tracy.**

Board of Tax Appeals, No. 95-K-49. On motion to consolidate case with 98-2556, *supra*. Motion granted.

Cook, J., not participating.

**98-2725. State v. Hawkins.**

Montgomery App. No. 15706. On motion for leave to file delayed appeal. Motion denied.

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

**99-165. State ex rel. Forsyth v. Brigner.**

Montgomery App. No. 17467. On emergency motion to vacate void judgment. Motion denied.

**99-282. State ex rel. Vornholt v. Ohio Dept. of Transp.**

In Mandamus. On answer of respondent. *Sua sponte*, alternative writ granted.

Lundberg Stratton, J., dissents and would dismiss the cause.

**99-379. State v. Smith.**

Cuyahoga App. No. 75317. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**99-396. State v. Reaves.**

Hamilton App. No. C-970631. On motion for leave to file delayed appeal. Motion granted.

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

**99-401. State v. Brown.**

Cuyahoga App. No. 74311. On motion for leave to file delayed appeal. Motion denied.

**99-422. President & Bd. of Trustees of Ohio Univ. v. Smith.**

Athens App. No. 98CA11. On motions for stay of judgment of court of appeals. Motions denied.

**99-428. DeRolph v. State.**

Perry C.P. No. 22043. *Sua sponte*, this cause is consolidated with 95-2066, *DeRolph v. State*, Perry App. No. 94-CA-477, and appeals from the court of common pleas are permitted to be filed in the Supreme Court as direct appeals.

Moyer, C.J., and Douglas, J., would not consolidate 95-2066 and 99-428 but would also permit direct appeals to be filed in the Supreme Court.

Cook, J., dissents.

**99-429. Gibson v. Meadow Gold Dairy.**

Franklin App. No. 98AP-282. 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' Judgment Entry filed February 4, 1999:

“[I]t is the order of this court that the motion to certify the judgment of this court as being in conflict with the judgment of the Court of Appeals for Wayne County in *Johnson v. A.R.E., Inc.* (Jan. [21], 1998), Wayne App. No[s]. 97CA0005 [and 97CA0006], unreported, 1998 WL 46801, is sustained, and, pursuant to Section 3(B)(4), Article IV, Ohio Constitution, the record of this case is certified to the Supreme Court of Ohio for review and final determination upon the following issue in conflict:

“Does R.C. 4123.65 apply to any and all settlements of a claim under R.C. [Title] 41, specifically settlements entered into while the claim is pending before a court of common pleas pursuant to R.C. 4123.512.”

*Sua sponte*, cause consolidated with 99-122, *infra*.

F.E. Sweeney, J., dissents to the above orders.

**DISCRETIONARY APPEALS ALLOWED**

**98-2301. State v. Gowdy.**

Hamilton App. No. C-970359.

Lundberg Stratton, J., would allow on Proposition of Law No. III only.

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

**98-2630. Wolfe v. Wolfe.**

Montgomery App. No. 17111. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-2200, *Hillyer v. Great Am. Ins. Co.*, Lake App. No. 96-L-148; briefing schedule stayed.

**98-2718. Sammarco v. Anthem Ins. Cos., Inc.**

Hamilton App. No. C-971074.

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

**99-12. State v. Childs.**

Montgomery App. No. 16580.

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

**99-55. Hampel v. Food Ingredients Specialties, Inc.**

Cuyahoga App. No. 73143. On appeal of Laszlo J. Hampel. Appeal allowed.

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

On cross-appeal of Food Ingredients Specialties, Inc. Cross-appeal denied.

On motion to consolidate with case No. 98-1927, *Madera v. Satellite Shelters, Inc.*, Cuyahoga App. No. 73172. Motion denied.

On motion for leave to intervene of Satellite Shelters, Inc. Motion denied.

**99-122. Gibson v. Meadow Gold Dairy.**

Franklin App. No. 98AP-282. Discretionary appeal allowed and cause consolidated with 99-429, *supra*.

F.E. Sweeney, J., dissents.

**99-162. Braden v. Cleveland Bd. of Edn.**

Cuyahoga App. No. 75191. *Sua sponte*, cause held for the decision in 97-2419, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*; briefing schedule stayed.

**99-164. Brown v. Dayton.**

Montgomery App. Nos. 16875 and 16876. On appeal of city of Dayton and on appeal of Waste Management of Ohio, Inc. Appeals allowed.

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

**DISCRETIONARY APPEALS NOT ALLOWED**

**99-4. Carlson v. Woolpert Consultants.**

Montgomery App. Nos. 17292 and 17303.

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

**99-11. Hill v. Christ Hosp.**

Hamilton App. No. C-970560.

Douglas, J., dissents.

**99-13. Webb v. Smith.**

Summit App. No. 18859. On appeal of S. R. Smith, Inc. Appeal denied.

Cook and Lundberg Stratton, JJ., dissent.

On cross-appeal of William D. Webb II. Cross-appeal denied.

Cook, J., dissents.

On motion for admission *pro hac vice* of George James Stephan and Harry W.R. Chamberlain II. Motion granted.

**99-25. State v. Parks.**

Ross App. No. 98CA2396.

**99-29. Thomas v. Vaughn.**

Cuyahoga App. No. 72839.

Resnick, J., dissents.

**99-32. Mullen v. Ohio Dept. of Transp.**

Morgan App. No. CA9712.

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

**99-35. Bell v. Mittleman.**

Cuyahoga App. No. 73350.

F.E. Sweeney, J., dissents.

**99-44. Fleming v. Morgan Local School Bd. of Edn.**

Morgan App. No. CA9713. On appeal of Bureau of Workers' Compensation and Morgan Local School District and on cross-appeal of Rodney L. Fleming. Appeal and cross-appeal denied.

**99-60. Fields v. Johnson.**

Cuyahoga App. No. 74375.

**99-61. J & J Refuse, Inc. v. Tomkins Industries, Inc.**

Morgan App. No. CA9804.

**99-63. Farmer v. Castlerock Properties, Inc.**

Hamilton App. No. C-980068.

**99-76. Page v. Strong.**

Montgomery App. No. 17376.

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

**99-78. State v. Collier.**

Carroll App. No. 684.

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

**99-83. Wickford Metal Products v. Tri-Village Church of Christ, Inc.**

Licking App. No. 98CA47.

**99-91. In re Marie Louise Hamilton Trust.**

Pickaway App. No. 98CA01.

Pfeifer, J., dissents.

**99-103. Churchill v. Hamilton Mut. Ins. Co.**

Erie App. No. E-98-011.

**99-106. Ohio Assn. of Pub. School Emp., A.F.S.C.M.E., Local 4 v. Anthony Wayne Local School Dist. Bd. of Edn.**

Lucas App. No. L-98-1114.

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

**99-111. In re Estate of Weilert.**

Franklin App. No. 98AP-390.

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

**99-167. Tandon v. Tandon.**

Jefferson App. No. 98JE50.

Lundberg Stratton, J., dissents.

**99-209. State v. Cox.**

Jackson App. No. 98CA841.

**99-311. Justice v. Jefferson-Pilot Life Ins. Co.**

Franklin App. No. 98AP-177.

Lundberg Stratton, J., not participating.

**RECONSIDERATION DOCKET**

**95-1792. State ex rel. Colliver v. Indus. Comm.**

Franklin App. No. 94APD05-684. Reported at 84 Ohio St.3d 476, \_\_\_ N.E.2d \_\_\_\_\_. On motion for reconsideration and on motion to strike. Motions denied.

**97-1111. State v. Stojetz.**

Madison C.P. No. 96CR10086. Reported at 84 Ohio St.3d 452, \_\_\_ N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.

**97-2387. Schindler Elevator Corp. v. Tracy.**

Board of Tax Appeals, No. 96-S-1753. Reported at 84 Ohio St.3d 496, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Pfeifer and Lundberg Stratton, JJ., dissent.

**97-2462. United Tel. Co. of Ohio v. Tracy.**

Board of Tax Appeals, Nos. 91-Z-197, 91-Z-198 and 91-Z-199. Reported at 84 Ohio St.3d 506, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration and/or motion for clarification. Motions denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**97-2517. State ex rel. Fryerson v. Tate.**

Belmont App. No. 97BA38. Reported at 84 Ohio St.3d 481, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

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

**97-2520. Stein, Inc. v. Tracy.**

Board of Tax Appeals, No. 92-T-1388. Reported at 84 Ohio St.3d 501, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**98-2300. Nwankpa v. Hines.**

Franklin App. No. 98AP-147. Reported at 84 Ohio St.3d 1501, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**98-2349. State v. Schoonover.**

Adams App. No. 97CA647. Reported at 84 Ohio St.3d 1501, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

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

**98-2499. T. Carroll Ent., Inc. v. Hammitt.**

Lucas App. No. L-98-1113. Reported at 85 Ohio St.3d 1405, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

**98-2506. Kinney v. Ohioagro, Inc.**

Delaware App. No. 98CAE03017. Reported at 85 Ohio St.3d 1405, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

F.E. Sweeney, J., dissents.

**98-2565. McBroom v. Bob-Boyd Lincoln Mercury, Inc.**

Franklin App. Nos. 98AP-229 and 98AP-230. Reported at 85 Ohio St.3d 1406, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**98-2583. Whiting v. Aerni.**

Cuyahoga App. No. 73323. Reported at 85 Ohio St.3d 1407, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.