

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
May 17, 2000

MERIT DOCKET

00-158. State ex rel. Hill v. Ohio Ins. Guar. Assn.

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

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

Douglas, J., would grant an alternative writ and set for oral argument.

Resnick, J., would grant an alternative writ and consolidate this cause with 00-341, *State ex rel. Witt v. Ohio Ins. Guar. Assn.*

Pfeifer, J., would grant an alternative writ, consolidate with 00-341, *supra*, and set for oral argument.

00-341. State ex rel. Witt v. Ohio Ins. Guar. Assn.

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

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

Douglas, J., would grant an alternative writ and set for oral argument.

Resnick, J., would grant an alternative writ and consolidate this cause with 00-158, *State ex rel. Hill v. Ohio Ins. Guar. Assn.*

Pfeifer, J., would grant an alternative writ, consolidate with 00-158, *supra*, and set for oral argument.

00-604. Smith v. State.

In Habeas Corpus. On petition for writ of habeas corpus by Daniel Smith. *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**

00-294. State v. Bronaugh.

Hamilton App. No. C-990115.

00-366. State v. Moreland.

Montgomery App. No. 17557. On discretionary appeal. Appeal denied.

Lundberg Stratton, J., dissents.

On discretionary cross-appeal. Appeal denied.

00-369. State v. Granger.

Pickaway App. No. 99CA27.

Lundberg Stratton, J., dissents.

00-371. Qualchoice, Inc. v. Yost Constr. Co.

Lorain App. No. 98CA007224.

00-373. State v. Porter.

Cuyahoga App. No. 75452.

Resnick, J., not participating.

00-378. State v. Nelson.

Tuscarawas App. No. 1999AP020007.

Pfeifer and Lundberg Stratton, JJ., dissent.

00-381. State v. Applewhite.

Medina App. No. 2958-M.

00-383. State v. Brunston.

Franklin App. No. 99AP-421.

00-388. Jennings v. Univ. Ear, Nose & Throat Specialists, Inc.
Hamilton App. No. C-980994.
Pfeifer, J., dissents.

00-390. State v. Keaton.
Clark App. No. 98CA99.

00-394. Asish Ent. v. Fairview Park.
Cuyahoga App. No. 75088.
Resnick, J., dissents.

00-396. State v. Ginyard.
Montgomery App. No. 17774.

00-404. Neura's Top Soil v. Brunswick.
Medina App. No. 2947-M.

00-409. State v. Pasturzak.
Scioto App. No. 99CA2676.

00-416. Sherrills v. Pennington.
Franklin App. No. 98AP-1022.

00-417. State v. Forester.
Franklin App. No. 99AP-495.

00-418. State v. Price.
Hamilton App. No. C-990324.

**00-424. Westward Auto. Inc. v. Ohio Motor Vehicle Salvage Dealers
Licensing Bd.**
Columbiana App. No. 98CO69.

00-425. Allgood v. Akron.
Summit App. No. 19554.
Resnick, J., dissents.

00-431. Wisham v. Miller.
Cuyahoga App. No. 76762.

00-436. State v. Davis.

Columbiana App. No. 98CO70.

00-438. Grogan v. Cincinnati Ins. Co.

Hardin App. No. 6-99-09.

00-440. State v. Schulte.

Mercer App. No. 10-99-15.

00-447. State v. Heina.

Medina App. No. 3039-M.

00-458. State v. Francis.

Guernsey App. No. 98CA13.

00-459. In re Nicholson.

Cuyahoga App. Nos. 75533, 75534, 75535, 75536, 75537, 75538 and 75539.
Pfeifer, J., dissents.

00-462. State v. Gondek.

Medina App. No. 2928-M.

00-473. State v. Cruz.

Cuyahoga App. No. 75723.
Moyer, C.J., dissents.

00-475. State v. Butler.

Butler App. No. CA99-07-126.

00-477. State v. Fuller.

Cuyahoga App. No. 77193.
Resnick, J., not participating.

00-497. State v. Grant.

Belmont App. No. 98BA41.

00-511. State v. Lucaj.

Cuyahoga App. No. 75818.

00-517. In re Mark M.
Erie App. No. E-99-028.

00-521. State v. Rogers.
Cuyahoga App. No. 77234.
Resnick, J., not participating.

MOTION DOCKET

97-98. State v. Madrigal.
Lucas C.P. No. CR965761. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

99-2151. Alder v. Eli Lilly & Co.
Summit App. No. 19400. On motion for admission *pro hac vice* by James R. Vaughn for Sheila AnnMarie Moeller for Dart Industries, Inc. Motion granted.

00-415. State v. Wells.
Montgomery App. No. 17501. 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' Decision and Order Certifying Conflict filed February 18, 2000, at pages 2-3:

“Bearing in mind that ‘penetration, however slight, is sufficient to complete anal intercourse’—R.C. 2907.01(A)—is there sufficient evidence of anal intercourse where the evidence shows at most that the defendant’s penis was inserted between the victim’s buttocks, and the evidence fails to show that the defendant’s penis actually penetrated the victim’s anus itself?”

Sua sponte, cause consolidated with 00-357, *State v. Wells*, Montgomery App. No. 17501.

The conflict case is *State v. Allen* (May 8, 1985), Hamilton App. No. C-840479, unreported, 1985 WL 6781.

00-482. Gallo v. Trakas.
Franklin App. No. 99AP-513. On review of order certifying a conflict. The court determines that a conflict exists. *Sua sponte*, cause consolidated with 00-403, *Gallo v. Trakas*, Franklin App. No. 99AP-513, and held for the decision in 99-1652 and 99-1962, *Johnson v. Rhodes*, Washington App. No. 98CA26; briefing schedule stayed.

00-624. State v. Gregley.

Cuyahoga App. No. 75032. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

00-625. State v. Washington.

Cuyahoga App. No. 71431. On motion for leave to file delayed appeal. Motion denied.

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

00-635. State v. Walker.

Hamilton App. No. C-980717. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

00-643. Eaton v. Morgan.

In Habeas Corpus. On petition for writ of habeas corpus by Arnold Eaton. *Sua sponte*, writ allowed. Respondent is ordered to file a return of writ within twenty days of service of the petition, and petitioner may file a response within ten days. Petitioner's physical presence is not required.

Moyer, C.J., Cook and Lundberg Stratton, JJ., would hold this cause for the decision in 98-2694, *State ex rel. Bray v. Russell*, Warren App. No. CA98-06-068.

00-652. State v. Gadsen.

Stark App. No. 1999CA00392. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cook, JJ., dissent.

00-662. Meritech Blue, Inc. v. Meritech, Inc.

Cuyahoga App. No. 77826. On motion for stay of court of appeals' judgment. Motion denied.

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

Resnick, J., not participating.

DISCRETIONARY APPEALS ALLOWED

99-2316. State v. Lozada.

Portage App. No. 98-P-0098.

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

00-262. Ohayon v. Safeco Ins. Co. of Illinois.

Summit App. No. 19617. Discretionary appeal allowed and cause to be set for oral argument.

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

00-266. State v. Burnett.

Hamilton App. No. C-981003.

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

00-357. State v. Wells.

Montgomery App. No. 17501. *Sua sponte*, cause consolidated with 00-415, *State v. Wells*, Montgomery App. No. 17501.

00-403. Gallo v. Trakas.

Franklin App. No. 99AP-513. Discretionary appeal allowed and cause consolidated with 00-482, *Gallo v. Trakas*, Franklin App. No. 99AP-513; *sua sponte*, cause held for the decision in 99-1652 and 99-1962, *Johnson v. Rhodes*, Washington App. No. 98CA26; briefing schedule stayed.

DISCRETIONARY APPEALS NOT ALLOWED

00-363. Woods v. Owners Ins. Co.

Ross App. No. 99CA2486.

00-368. Gilkey v. Gibson.

Franklin App. No. 98AP-1570.

Resnick and Pfeifer, JJ., dissent.

00-377. Skoch v. Rock Creek Aluminum, Inc.

Cuyahoga App. No. 75598.

Douglas and Resnick, JJ., dissent.

00-391. Abbas v. Abbas.

Wood App. No. WD-99-069.

Resnick, J., not participating.

00-398. State v. Glover.

Stark App. No. 1999CA00285.

00-406. Gen. Motors Corp. v. Monte Zinn Chevrolet Co.
Franklin App. Nos. 99AP-261, 99AP-262 and 99AP-263.

00-410. Dale & Madeline Bennington Creative Investors v. Robinson.
Stark App. No. 1999CA00212.

00-421. Salisbury v. Gordon Air Mgt. Corp.
Summit App. No. 19085.
Lundberg Stratton, J., dissents.

00-423. Tihansky v. Memorial Hosp.
Sandusky App. No. S-99-015.

00-433. N.Z. v. Lorain Head Start.
Lorain App. Nos. 98CA007254 and 98CA007256.
Moyer, C.J., dissents.

00-437. Bishop v. Brooks Beverage Mgt. /Athens Bottling Co.
Athens App. No. 99CA13.
Moyer, C.J., dissents.

00-453. Cjomek v. LTV Steel Co.
Cuyahoga App. Nos. 74646 and 74647.

00-465. Cuyahoga Metro. Hous. Auth. v. Imperial Cas. & Indemn. Co.
Cuyahoga App. No. 75719.
Pfeifer, J., dissents.
Resnick, J., not participating.

00-471. Neiheiser v. Neiheiser.
Cuyahoga App. No. 75184.

00-540. State v. Taylor.
Butler App. No. CA99-02-024.

RECONSIDERATION DOCKET

98-1496. State ex rel. Diaz v. Indus. Comm.

Franklin App. No. 97APD03-434. Reported at 88 Ohio St.3d 281, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

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

98-2439. Ricker v. John Deere Ins. Co.

Franklin App. No. 97APE11-1505. Reported at 88 Ohio St.3d 1229, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

99-1142. State ex rel. OHIC Ins. Co. v. Ohio Ins. Guar. Assn.

In Mandamus. Reported at 88 Ohio St.3d 256, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

Douglas, Resnick and Pfeifer, JJ., dissent.

99-2270. Cleveland Bar Assn. v. Glatki.

Reported at 88 Ohio St.3d 381, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

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