

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
December 6, 2000

MERIT DOCKET

00-1421. Toledo v. Pub. Util. Comm.

Public Utilities Commission, No. 99-1609-EL-ORD. On motion to dismiss appeal. Motion to dismiss sustained. Cause dismissed.

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

00-1713. State ex rel. Plassman v. Sixth Dist. Court of Appeals.

In Mandamus. On answer of respondents and on motion for judgment on pleadings. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

Resnick, J., not participating.

00-1759. State ex rel. Valdez v. Montgomery.

In Mandamus. On motion to dismiss by respondents and on motion for summary judgment. Motion to dismiss sustained. Cause dismissed.

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

00-1764. State ex rel. Toledo v. Pub. Util. Comm.

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.

00-1772. State ex rel. Martin v. Cline.

In Mandamus. On answer of respondent and motion for judgment on pleadings, motion to dismiss, motion for summary judgment, and motion for protective order. Motion to dismiss sustained. Cause dismissed.

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

00-1995. State ex rel. Bragg v. Morgan.

In Habeas Corpus. On petition for writ of habeas corpus of John T. Bragg. *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**

00-1256. State v. Stoutmire.

Mahoning App. No. 96CA186.

00-1621. State v. Walters.

Coshocton App. No. 99CA11.

Cook and Lundberg Stratton, JJ., dissent.

00-1624. State v. Zudell.

Lorain App. No. 99CA007477.

F.E. Sweeney, J., dissents.

00-1628. Buoscio v. Kinkopf.

Cuyahoga App. No. 76842.

00-1631. State v. Miles.

Cuyahoga App. No. 78255.

00-1634. Cleveland v. Paterakis.
Cuyahoga App. No. 77878.

00-1641. State v. Holsinger.
Fairfield App. No. 00CA06.

00-1643. State v. Manning.
Lucas App. No. L-99-1344.
Resnick, J., not participating.

00-1644. State v. Patterson.
Lucas App. No. L-99-1268.
Resnick, J., not participating.

00-1648. Ward v. Wehby.
Hamilton App. No. C-990846.

00-1649. Kupczyk v. Kuschnir.
Cuyahoga App. No. 76614.

00-1650. State v. Clutter.
Butler App. No. CA98-12-254.

00-1651. State v. Shaffer.
Morrow App. No. CA904.
Lundberg Stratton, J., dissents.

00-1661. State v. Booth.
Huron App. No. H-98-047.

00-1668. Ravida v. Gunton Corp.
Cuyahoga App. No. 76659.
Moyer, C.J., dissents.

00-1669. State v. Turner.
Montgomery App. No. 18026.

00-1670. State v. Agner.
Allen App. No. 1200004.

00-1676. State v. Roberts.
Hamilton App. No. C-980751.

00-1681. State v. Frazier.
Cuyahoga App. No. 76775.

00-1683. Baker v. Beacon Place Apts.
Lucas App. No. L-99-1418.
Resnick, J., not participating.

00-1687. Dale v. Salasek.
Stark App. No. 2000CA00050.

00-1696. Wray v. Allied Indus. Dev. Corp.
Mahoning App. No. 99CA246.

00-1712. State v. Sayles.
Hamilton App. No. C-990917.

00-1714. State v. Hall.
Hamilton App. No. C-990639.
Lundberg Stratton, J., dissents and would allow on Proposition of Law No. I.

00-1718. State v. Aeh.
Franklin App. No. 99AP-1028.

00-1723. State v. Yanasak.
Medina App. No. 833.
Cook, J., dissents and would reverse and remand for consideration of *White v. Schotten* (C.A.6, 2000), 201 F.3d 743.

00-1740. State v. Jordan.
Hamilton App. No. C-990913.

00-1741. State v. Engleman.
Hamilton App. No. C-990845.

00-1745. State v. Staats.

Stark App. No. 1999CA00326.

Cook, J., dissents and would reverse and remand for consideration of *White v. Schotten* (C.A.6, 2000), 201 F.3d 743.

00-1747. State v. Winkfield.

Franklin App. No. 99AP-555.

00-1767. State v. Workman.

Butler App. No. CA20003049.

00-1818. State v. Stevens.

Hocking App. No. 00CA05.

00-1954. In re Adoption of Ashley F.

Lucas App. No. L-00-1146.

Douglas, J., dissents.

MOTION DOCKET

98-640. State v. Stallings.

Summit C.P. No. CR97051118A. On application for reopening under S.Ct.Prac.R. XI(5) and on motion to strike application for reopening. Motion to strike denied and the prosecutor is ordered to file within thirty days.

Resnick, F.E. Sweeney and Pfeifer, JJ., would deny the motion to strike only.

00-591. State v. Hill.

Fairfield App. No. 98CA67. On motion for admission *pro hac vice* of Lucy A. Dalglish, Esq. by Richard M. Goehler, Esq. Motion granted.

00-1405. State ex rel. Stys v. Parma Community Gen. Hosp. Assn.

In Mandamus. On relators' motions for peremptory writ and to strike respondents' evidentiary materials and on respondents' answer and motion for judgment on the pleadings. Upon the court's determination pursuant to S.Ct.Prac.R. X(5),

IT IS ORDERED by the court that relators' motions for peremptory writ and to strike respondents' evidentiary materials and respondents' motion for judgment on the pleadings are hereby DENIED.

IT IS FURTHER ORDERED by the court that an alternative writ is hereby GRANTED and that the following schedule be set for the presentation of evidence and the filing of briefs:

The parties shall file any evidence they intend to present within twenty days of this entry. Respondents shall file unredacted copies of the requested records under seal at the same time they file their evidence. Relators shall file their merit brief within twenty days after the filing of the evidence; respondents shall file their merit brief within twenty days after the filing of relators' merit brief; and relators shall file any reply brief within five days thereafter. See *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency* (1999), 86 Ohio St.3d 1439, 713 N.E.2d 1050.

00-1454. Vance v. Vance.

Montgomery App. No. 18437. On motion for sanctions for frivolous action only. Motion denied.

Douglas and Resnick, JJ., dissent, would grant the motion for sanctions, and would award \$200 in expenses and \$1,000 in attorney fees.

On motion to strike motion for sanctions. Motion denied and leave of ten days granted to file a response.

00-1658. State ex rel. Sherrills v. State.

Cuyahoga App. No. 78261. On petition to compel compliance with the court's order to certify the record and to subpoena. Petition denied.

00-1673. State ex rel. Sherrills v. Ohio Adult Parole Auth.

Franklin App. No. 99AP-1295. On petition for sanctions to compel compliance with order to certify the record and to subpoena. Petition denied.

00-1682. State v. Barnes.

Portage App. No. 98-P-0052. 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 September 14, 2000:

"It is the order of this court that the record of the instant appeal shall be certified to the Supreme Court of Ohio for review and determination of the following two legal issues: (1) When a defendant is asserting self-defense, can he introduce evidence of specific violent acts committed by the victim in the past to show that the victim was the aggressor?; and (2) Is felonious assault with a deadly weapon a lesser-included offense of attempted murder?"

Cook, J., would accept review on the second issue only.

Sua sponte, cause consolidated with 00-1595, *State v. Barnes*, Portage App. No. 98-P-0052. The conflict cases include *State v. Cuttiford* (1994), 93 Ohio App.3d 546, 639 N.E.2d 472; *State v. Busby* (Sept. 14, 1999), Franklin App. No. 98AP-1050, unreported, 1999 WL 710353; *State v. Weston* (July 16, 1999), Washington App. No. 97CA31, unreported, 1999 WL 552732; *State v. Douglas* (Mar. 16, 1999), Mahoning App. No. 94CA214, unreported, 1999 WL 159207; *State v. Scott* (Sept. 7, 1995), Cuyahoga App. No. 67148, unreported, 1995 WL 527597; *State v. Kaiser* (Oct. 15, 1986), Montgomery App. No. 9287, unreported, 1986 WL 11812; *State v. Box* (1993), 89 Ohio App.3d 614, 626 N.E.2d 996; and *State v. Heath* (June 25, 1997), Hamilton App. No. C-950676, unreported, 1997 WL 346083.

00-1730. Hubin v. Hubin.

Franklin App. No. 99AP-1156. 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 October 19, 2000:

“When determining the proper amount of child support in a shared parenting case, must a court presume that each parent must pay his or her child support obligation on line twenty-four of the child support worksheet and then order the difference through an offset while reserving the ability to deviate?”

Sua sponte, cause consolidated with 00-1406, *Hubin v. Hubin*, Franklin App. No. 99AP-1156.

F.E. Sweeney, J., dissents to all of the above.

The conflict cases are *Weinberger v. Weinberger* (May 15, 1998), Hamilton App. No. C-970552, unreported, 1998 WL 241790; *Congdon v. Congdon* (Nov. 13, 1998), Hamilton App. No. C-971002, unreported, 1998 WL 789144; *Luke v. Luke* (Feb. 20, 1998), Lake App. No. 97-L-044, unreported, 1998 WL 172813; *Anthony v. Anthony* (Dec. 3, 1999), Lake App. No. 98-L-222, unreported, 1999 WL 1313730; *French v. Burkhart* (May 22, 2000), Delaware App. No. 99CAF07038, unreported, 2000 WL 699656; and *Beard v. Beard* (1998), 130 Ohio App.3d 102, 719 N.E.2d 625.

00-1775. Howard v. Franks.

Lucas App. No. L-00-1163. On motion to supplement record. Motion denied.

00-1947. State v. Feathers.

Summit App. No. 19837. On motion for leave to file delayed appeal. Motion granted.

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

00-1955. State v. Pearson.

Wood App. No. WD-00-022. On motion for leave to file delayed appeal. Motion denied.

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

00-1991. Applegate v. Applegate.

Franklin App. Nos. 99AP-1321 and 99AP-1399. On motion for stay of court of appeals' decision pending appeal and on motion to strike motion for stay. Motions denied.

00-2006. Brzezinski v. Feuerwerker.

Cuyahoga App. No. 74288. On motion for stay of court of appeals' judgment. Motion denied.

DISCRETIONARY APPEALS ALLOWED

00-1406. Hubin v. Hubin.

Franklin App. No. 99AP-1156. Discretionary appeal allowed on Proposition of Law No. III and cause consolidated with 00-1730, *Hubin v. Hubin*, Franklin App. No. 99AP-1156.

Douglas, Resnick and Lundberg Stratton, JJ., would also allow on all other propositions of law.

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

00-1517. State v. Bassham.

Greene App. No. 2000CA29.

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

00-1519. State v. Jones.

Cuyahoga App. No. 76222.

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

00-1536. State v. Singh.

Lake App. No. 98-L-090.

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

00-1543. Auto. Club Ins. Co. v. Mills.

Clermont App. Nos. CA99-07-064 and CA99-07-070. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 99-1986, *Doe v. Shaffer*, Hamilton App. No. C-980729; briefing schedule stayed.

Douglas and Pfeifer, JJ., dissent.

00-1554. Day v. Middletown-Monroe City School Dist.

Butler App. No. CA99-11-186.

Cook and Lundberg Stratton, JJ., dissent.

00-1555. State v. Thompson.

Montgomery App. No. 17984.

Resnick and Pfeifer, JJ., dissent.

00-1556. Vaccariello v. Smith & Nephew Richards, Inc.

Cuyahoga App. No. 76594.

Moyer, C.J., and Cook, J., would allow on Proposition of Law No. II only and hold this cause for the decision in 00-1030, *Ohio Hosp. Assn. v. Armstrong World Industries, Inc.*, Cuyahoga App. No. 76067.

00-1572. Wallace v. Balint.

Cuyahoga App. No. 75953. Discretionary appeal and cross-appeal allowed.

Moyer, C.J., dissents.

F.E. Sweeney, J., not participating.

00-1595. State v. Barnes.

Portage App. No. 98-P-0052. Discretionary appeal allowed on Proposition of Law II and cause consolidated with 00-1682, *State v. Barnes*, Portage App. No. 98-P-0052.

Moyer, C.J., would also allow on Proposition of Law No. I.

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

Douglas, Resnick and Pfeifer, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

00-1605. State v. Brant.

Portage App. No. 99-P-0037.

Douglas and Lundberg Stratton, JJ., dissent.

00-1626. State v. Johnston.
Ashland App. No. 99COA01333.

00-1637. Phillips v. Carey.
Wyandot App. No. 16-99-11.

00-1642. Needs v. Lowry.
Stark App. No. 2000CA00003.

00-1656. J.D. Partnership v. Berlin Twp. Bd. of Trustees.
Delaware App. No. 00CAH01002.

00-1666. Yeazell v. Yeazell.
Clark App. No. 2000CA7.

00-1667. State v. Alexander.
Montgomery App. No. 18205. On discretionary appeal and cross-appeal. Appeals denied.

00-1672. Sowders v. Ohio Liquor Control Comm.
Montgomery App. No. 18173.

00-1686. Polakoff v. Polakoff.
Trumbull App. No. 98-T-0163.
Douglas and Lundberg Stratton, JJ., dissent.

00-1689. Shaker v. Russian Tea Room.
Cuyahoga App. No. 77215.

00-1748. State v. Humphrey.
Hamilton App. No. C-000040.

RECONSIDERATION DOCKET

00-1249. State v. Ward.
Marion App. No. 9200040. Reported at 90 Ohio St.3d 1438, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

00-1367. McGregor v. Hanson.

Geauga App. No. 99-G-2228. Reported at 90 Ohio St.3d 1443, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

00-1370. Murin v. Jeep Eagle Corp.

Lucas App. No. L-99-1346. Reported at 90 Ohio St.3d 1440, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

00-1377. In re Brodman.

Wyandot App. No. 16200007. Reported at 90 Ohio St.3d 1440, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

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

00-1473. State ex rel. Gunnell v. Bowman.

In Mandamus. Reported at 90 Ohio St.3d 1438, ___ N.E.2d ___. On motion for
reconsideration. Motion denied.

00-1539. Miller v. Ohio Bur. of Emp. Serv.

Butler App. No. CA99-11-189. Reported at 90 Ohio St.3d 1450, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

00-1844. State ex rel. Streicher v. Ruhlman.

In Prohibition. Reported at 90 Ohio St.3d 1446, ___ N.E.2d ___. On motion for
reconsideration. Motion denied.

Douglas, J., dissents.