

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
February 7, 2001

MERIT DOCKET

00-2153. State ex rel. Bair v. Fifth Dist. Court of Appeals.

In Mandamus. On complaint in mandamus by Jonathan D. Bair. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

00-2188. State ex rel. Jennings v. Hamilton Cty. Court of Common Pleas.

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.

00-2243. State ex rel. Byrd v. Gaul.

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.

00-2265. Willard v. Semer.

Huron App. No. H-99-031. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

Moyer, C.J., dissents, would accept jurisdiction, and would hold the cause for the decision in 00-1595 and 00-1682, *State v. Barnes*, Portage App. No. 98-P-0052.

Cook and Lundberg Stratton, JJ., dissent.

00-2293. Brown v. Kinkela.

In Habeas Corpus. On petition for writ of habeas corpus by Timothy Brown. *Sua sponte*, cause dismissed.

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

00-2322. Kacmarik v. Brooks.

In Habeas Corpus. On petition for writ of habeas corpus by Michael Kacmarik. *Sua sponte*, cause dismissed.

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

00-2331. State ex rel. Lee v. Hildebrandt.

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.

00-2348. Harman v. Ohio Adult Parole Auth.

In Habeas Corpus. On petition for writ of habeas corpus by Donald A. Harman. *Sua sponte*, cause dismissed.

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

01-38. In re Frederick.

In Habeas Corpus. On petition for writ of habeas corpus by Jack L. Frederick. *Sua sponte*, cause dismissed.

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

01-45. Dunning v. Mason.

In Habeas Corpus. On petition for writ of habeas corpus by Yul Dunning. *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**

00-1941. Porter v. Little.

Butler App. No. CA200003052.

00-1945. State v. Bishop.

Madison App. No. CA99-12-037.

Cook, J., dissents.

00-1966. Bethke v. 12900 Lake Ave. Condominium Assn.

Holmes App. No. 76774.

00-1969. Busch v. Unibilt Industries, Inc.

Montgomery App. No. 18175.

00-1972. Wolfe v. Sagle.

Muskingum App. No. CT990021.

00-1976. State v. Jones.

Scioto App. Nos. 98CA2624 and 98CA2626.

00-1979. State v. Berenyi.

Allen App. No. 1-99-87.

00-1986. State v. McDay.

Summit App. No. 19610.

00-1989. State v. Monroe.

Franklin App. No. 99AP-1464.

00-1990. State v. Cunningham.

Franklin App. No. 00AP-67.

00-1991. Applegate v. Applegate.

Franklin App. Nos. 99AP-1321 and 99AP-1399. On motion to strike notice of appeal. Discretionary appeal and motion denied.

00-1992. State v. Beranek.

Lucas App. No. L-99-1173.

Resnick, J., not participating.

00-1993. State v. Comer.

Lucas App. No. L-99-1296.

Pfeifer, J., dissents.

Resnick, J., not participating.

00-1999. State v. Nelson.

Cuyahoga App. No. 77094.

00-2000. State v. Myers.

Hardin App. No. 6200004.

00-2006. Brzezinski v. Feuerwerker.

Cuyahoga App. No. 74288.

Resnick, J., dissents.

00-2007. State v. Woods.

Lake App. No. 99-L-111.

Resnick, J., dissents.

00-2011. Duff v. Duff.

Guernsey App. No. 99CA44.

00-2013. State v. Herron.

Columbiana App. Nos. 98CO52 and 98CO68.

00-2015. State v. Perez.

Medina App. No. 3045-M.

00-2018. State v. Hightower.
Cuyahoga App. No. 76847.

00-2022. State v. Howell.
Adams App. No. 99CA679.

00-2023. State v. Schlee.
Lake App. No. 99-L-112.

00-2025. Levey & Co. v. Willoughby Bd. of Zoning Appeals.
Lake App. No. 98-L-218.

00-2031. State v. Sneed.
Stark App. No. 1999CA00339.

00-2034. State v. Hahn.
Medina App. No. 3020-M.
Resnick, J., dissents.

00-2042. In re Romine.
Guernsey App. No. 00CA12.
Moyer, C.J., and Lundberg Stratton, J., dissent.

00-2043. Johnson v. Hershberger.
Columbiana App. No. 99CO38.

00-2048. State v. Davis.
Cuyahoga App. No. 76315.

00-2052. State v. Elkins.
Summit App. No. 19684.

00-2066. Baldesari v. Baldesari.
Lucas App. No. L-99-1301.
Resnick, J., not participating.

00-2070. State v. Klink.
Richland App. No. 00CA16.

00-2071. State v. Raver.
Fairfield App. No. 00CA13.

00-2103. State v. Parker.
Lorain App. No. 99CA007508.

00-2132. State v. Zanders.
Summit App. No. 19295.

00-2135. State v. Iglesias-Rodriquez.
Cuyahoga App. No. 76028.

00-2180. State v. Chambers.
Franklin App. No. 99AP-1308.

00-2239. State v. Jeter.
Montgomery App. No. 17778.

MOTION DOCKET

98-640. State v. Stallings.
Summit C.P. No. CR97051118A. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

00-841. Strongsville Bd. of Edn. v. Lawrence.
Board of Tax Appeals, No. 99-A-351. *Sua sponte*, cause combined for oral argument and decision with 00-842, *Ehrnfelt v. Lawrence*, Board of Tax Appeals, No. 99-A-350.

00-842. Ehrnfelt v. Lawrence.
Board of Tax Appeals, No. 99-A-350. *Sua sponte*, cause combined for oral argument and decision with 00-841, *Strongsville Bd. of Edn. v. Lawrence*, Board of Tax Appeals, No. 99-A-351.

00-1833. State v. Jordan.
Lucas C.P. No. CR98-2736. On motion to withdraw as co-counsel by Pamela J. Prude-Smithers and motion for appointment of co-counsel. Motions granted and Ann Baronas is appointed.

00-2157. State v. Wozniak.

Franklin App. No. 00AP-349. On review of order certifying a conflict. The court determines that a conflict exists on the following issue:

“Does R.C. 2950.09(B)(2) unconstitutionally violate the doctrine of the separation of powers when it prescribes particular factors which a trial judge must consider in determining whether a person is a sexual predator?”

Douglas, J., dissents.

Cause consolidated with 00-2014, *State v. Wozniak*, Franklin App. No. 00AP-349, and cause held for the decision in 00-1555, *State v. Thompson*, Montgomery App. No. 17984; briefing schedule stayed.

00-2187. DeCastro v. Wellston City School Dist. Bd. of Edn.

Jackson App. No. 00CA06. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue “whether nominal damages can be recovered where actual monetary damages cannot be proven in a breach of contract claim.”

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

Cause consolidated with 00-1853, *DeCastro v. Wellston City School Dist. Bd. of Edn.*, Jackson App. No. 00CA06.

The conflict cases are *Munoz v. Flower Hosp.* (1985), 30 Ohio App.3d 162, 30 OBR 303, 507 N.E.2d 360; *Textron Fin. Corp. v. Nationwide Mut. Ins. Co.* (1996), 115 Ohio App.3d 137, 684 N.E.2d 1261; and *Hackathorn v. Springfield Local School Dist.* (1994), 94 Ohio App.3d 319, 640 N.E.2d 882.

00-2264. State v. Singleton.

Cuyahoga App. No. 76357. On motion for leave to file delayed appeal. Motion denied.

F.E. Sweeney, J., dissents.

00-2282. State v. Clark.

Montgomery App. No. 18314. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

00-2308. State v. Woodson.

Lucas App. No. L-98-1235. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

00-2335. Porritt v. Howard.

Lucas App. No. L-00-1259. On amended motion for stay of court of appeals' decision. Motion denied.

01-24. State v. Burns.

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

01-26. State v. Montgomery.

Franklin App. No. 99AP-750. On motion for leave to file delayed appeal. Motion denied.

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

01-68. Wyper v. Wyper.

Lucas App. No. L-99-1378. On motion for immediate stay of the court of appeals' judgment. Motion denied.

Moyer, C.J., dissents.

Douglas and Resnick, JJ., not participating.

DISCRETIONARY APPEALS ALLOWED

00-1812. State v. Maxwell.

Franklin App. No. 99AP-1177. Discretionary appeal allowed on Proposition of Law No. II.

Douglas and Lundberg Stratton, JJ., would allow all propositions of law.

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

00-1838. Columbus Div. of Income Tax v. New Plan Realty Trust.

Franklin App. No. 99AP-1350.

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

00-1847. Klein v. Streicher.

Hamilton App. No. C-000678. Discretionary appeal allowed, and motion to dismiss appeal by Chuck Klein, Vernon Ferrier, Leanne Driscoll, James H. Cohen et al. denied.

Douglas, Resnick and Pfeifer, JJ., dissent.

00-1853. DeCastro v. Wellston City School Dist. Bd. of Edn.

Jackson App. No. 00CA06. Discretionary appeal allowed, and cause consolidated with 00-2187, *DeCastro v. Wellston City School Dist. Bd. of Edn.*, Jackson App. No. 00CA06.

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

00-1873. Carruth v. Erie Ins. Group.

Cuyahoga App. No. 77161. Discretionary appeal allowed, and cause held for the decision in 00-745 and 00-801, *Littrell v. Wigglesworth*, Butler App. Nos. CA99-05-092 and CA99-08-141; briefing schedule stayed.

00-1901. Taddeo v. Estate of Ellis.

Lorain App. No. 99CA007445.

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

00-1904. Ryll v. Columbus Fireworks Display Co.

Franklin App. Nos. 99AP-1061 and 99AP-1311.

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

00-1911. Basic Distrib. Corp. v. Ohio Dept. of Taxation.

Franklin App. No. 99AP-1309.

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

00-1914. State v. Noggle.

Crawford App. No. 3200009. Discretionary appeal allowed, and cause held for the decision in 98-1483, *State v. Jones*, Ashtabula C.P. No. 97CR221; briefing schedule stayed.

Pfeifer and Cook, JJ., dissent.

00-1928. Cincinnati v. Conyne.

Hamilton App. No. C-000589. Discretionary appeal allowed, and cause held for the decision in 00-472 and 00-481, *Johnson v. Greene Cty. Drug Task Force*, Greene App. No. 99CA61; briefing schedule stayed.

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

00-1951. Washington v. Citizens Security Mut. Ins. Co.

Cuyahoga App. No. 76082. Discretionary appeal allowed, and cause held for the decision in 00-745 and 00-801, *Littrell v. Wigglesworth*, Butler App. Nos. CA99-05-092 and CA99-08-141; briefing schedule stayed.

Cook, J., would allow on only Proposition of Law No. II.

Lundberg Stratton, J., dissents.

00-2014. State v. Wozniak.

Franklin App. No. 00AP-349. Discretionary appeal allowed on Proposition of Law No. I, and cause held for the decision in 00-1555, *State v. Thompson*, Montgomery App. No. 17984; briefing schedule stayed.

Lundberg Stratton, J., would also allow on Proposition of Law No. V.

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

Douglas and Resnick, JJ., dissent.

Sua sponte, cause consolidated with 00-2157, *State v. Wozniak*, Franklin App. No. 00AP-349.

DISCRETIONARY APPEALS NOT ALLOWED

00-1877. In re A.M.

Cuyahoga App. No. 74983.

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

00-1948. State v. Bailey.

Montgomery App. No. 18119.

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

00-1970. Holman v. Keegan.

Erie App. No. E-99-070.

Resnick, J., not participating.

00-1973. RPM, Inc. v. Oatey Co.

Medina App. No. 2960-M.

Douglas and Resnick, JJ., dissent.

00-1980. Bauer v. Huntington Natl. Bank.

Franklin App. No. 00AP-569.

00-1985. Corrections Corp. of Am. v. Youngstown Human Relations Comm.
Mahoning App. No. 99CA181.
Resnick, J., dissents.

00-1994. Gilkey v. Progressive Ins. Co.
Franklin App. Nos. 00AP-135 and 00AP-146.
Douglas and Resnick, JJ., dissent.

00-1996. Reichenbach v. TTW-NIFCO, Inc.
Franklin App. No. 00AP-42.

00-2002. Ellis v. Gen. Elec. Co.
Hamilton App. No. C-990775.
Lundberg Stratton, J., dissents.
Moyer, C.J., and Resnick, J., not participating.

00-2003. Seavert v. Ferraro.
Cuyahoga App. Nos. 76845 and 76846.

00-2016. State v. Weidner.
Ottawa App. No. OT-00-001.
Resnick, J., not participating.

00-2021. Mayflower Transit, Inc. v. Commercial Trailer Co.
Franklin App. Nos. 99AP-1058 and 99AP-1074.

00-2026. State v. Rangel.
Hamilton App. No. C-000013.
Pfeifer, J., dissents.

00-2027. Mgt. Plus Realty Serv., Inc. v. Banker.
Hamilton App. No. C-000007.

00-2033. Friend v. Elsea, Inc.
Pickaway App. No. 98CA29.

00-2035. Miller v. Conrad.
Richland App. No. 00CA27.

00-2047. Carnes v. Downing.

Logan App. No. 8200012.

00-2054. In re Guardianship of Clark.

Mahoning App. Nos. 99CA103 and 99CA88.

Lundberg Stratton, J., dissents.

00-2056. Keller v. Northwest Conduit Corp.

Franklin App. No. 99AP-1403.

Lundberg Stratton, J., dissents.

00-2058. Huntington Ctr. Assoc. v. Schwartz, Warren & Ramirez, L.L.C.

Franklin App. No. 00AP-35.

00-2059. Rolsen v. Lazarus, Inc.

Hamilton App. Nos. C-990588 and C-990627. On discretionary appeal and motion for admission *pro hac vice* of Robert P. Joy by Deborah Adams. Appeal and motion denied.

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

00-2060. Spears v. Hairston.

Franklin App. No. 99AP-1300.

00-2062. State v. Huffman.

Franklin App. No. 99AP-1223.

00-2064. Slack v. Karrington Operating Co.

Ashland App. No. 99COA01337.

Resnick and Pfeifer, JJ., dissent.

00-2080. State v. Leyman.

Medina App. No. 2970-M.

Cook, J., dissents, would reverse the court of appeals' judgment relating to the anal rape counts, and would remand the cause for a new trial on those counts pursuant to the decision and opinion in *State v. Wells* (2001), 91 Ohio St.3d 32, ___ N.E.2d ___.

RECONSIDERATION DOCKET

98-913. State v. Green.

Lucas C.P. No. 971450. Reported at 90 Ohio St.3d 352, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Resnick, J., dissents.

98-980. State v. Campbell.

Franklin C.P. No. 97CR042020. Reported at 90 Ohio St.3d 320, ___ N.E.2d ___. On motions for reconsideration. Motions denied.

Douglas and Resnick, JJ., would grant the state's motion for reconsideration.

99-2216 and 00-56. Mayer v. Bristow.

Crawford App. No. 3-98-29. Reported at 91 Ohio St.3d 3, ___ N.E.2d ___. On motion for reconsideration and on *amicus curiae* motion for leave to file under S.Ct.Prac.R. XI by Laurence A. Neuton. Motions denied.

Douglas, J., dissents.

Cook and Lundberg Stratton, JJ., not participating.

00-1100. Disciplinary Counsel v. Oglesby.

Reported at 90 Ohio St.3d 455, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

00-1634. Cleveland v. Paterakis.

Cuyahoga App. No. 77878. Reported at 90 Ohio St.3d 1480, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

00-1690. McDonald v. State Farm Mut. Auto. Ins. Co.

Cuyahoga App. No. 76808. Reported at 90 Ohio St.3d 1484, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas and Resnick, JJ., dissent.

00-1749. State v. Kelly.

Franklin App. No. 99AP-1302. Reported at 90 Ohio St.3d 1490, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

00-1831. State v. Simmons.

Montgomery App. No. 18077. Reported at 90 Ohio St.3d 1491, ___ N.E.2d ___.

On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.