

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

December 8, 2003

MOTION AND PROCEDURAL RULINGS

1999-1218. State v. Williams.

Lucas C.P. No. CR972268. Upon consideration of appellant's motion for reconsideration or clarification,

IT IS ORDERED by the court that the motion is granted to the extent that the parties are to brief the following issue:

"Following remand and a new penalty hearing, may a sentence of death be imposed upon the appellant under the current version of R.C. 2929.06, or does the version of R.C. 2929.06 in effect at the time of the offense, which would preclude a death sentence, apply upon remand of this case?"

IT IS FURTHER ORDERED by the court that appellant shall file his brief on the issue within 40 days of the date of this entry, appellee shall file its brief 30 days after the filing of appellant's brief, and appellant may file a reply brief within 20 days after the filing of appellee's brief. No extensions of time shall be permitted for the filing of the briefs, and the briefs shall otherwise comply with the Rules of Practice.

O'Donnell, J., not participating.

1999-1452. State v. Braden.

Franklin C.P. No. 98CR084601. On April 22, 2003, this court stayed the execution of sentence in this cause pending appellant's petition for writ of certiorari to the United States Supreme Court and pending exhaustion of state post-conviction remedies. Appellee has moved that this court set a date for execution of sentence. It appears to the court that all matters have been disposed of in case No. 1999-1452, appellant's direct appeal of his conviction, and in case No. 2003-1291, appellant's post-conviction appeal,

IT IS ORDERED by the court, sua sponte, that the stay of execution entered in this cause on April 22, 2003, be and is hereby revoked.

IT IS HEREBY ORDERED by this court that said sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Friday, the 5th day of March, 2004, in accordance with the statutes so provided.

IT IS FURTHER ORDERED that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Franklin County.

2003-0899. State v. Moody.

Champaign App. No. 2002 CA 13, 2003-Ohio-1566. This cause is pending before the court on the certification of conflict by the Court of Appeals for Champaign County. On review of the order certifying a conflict,

IT IS DETERMINED by the court that a conflict exists, and it is ordered by the court that the parties brief the issue stated at page 2 of the court of appeals' decision and entry filed April 24, 2003, as follows:

"We agree with the State that our judgment that R.C. 2919.24 is *not* a strict liability statute conflicts with judgments of other appellate districts that R.C. 2919.24 does impose strict liability. See *State v. Wood* (1989), 63 Ohio App.3d 855 [580 N.E.2d 484]; *State v. Thompson* (1994), 97 Ohio App.3d 629 [647 N.E.2d 226]; *State v. Stuck* (Mar. 28, 2003), Medina App. No. 02CA0071-M [2003-Ohio-1596].

"Accordingly, we sustain the State's motion to certify a conflict, and certify this question to the Supreme Court of Ohio for resolution:

"Is R.C. 2919.24 a strict liability statute?"

F.E. Sweeney, J., dissents.

IT IS FURTHER ORDERED by the court that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Champaign County.

2003-0969. Lumbermens Mut. Cas. Co. v. Xayphonh.

Summit App. No. 21217, 2003-Ohio-1482. This cause is pending before the court on the certification of conflict by the Court of Appeals for Summit County. On review of the order certifying a conflict,

IT IS DETERMINED by the court that a conflict exists, and it is ordered by the court that the parties brief the issue stated at page 2 of the court of appeals' journal entry filed May 2, 2003, as follows:

"Appellants have proposed that a conflict exists between the districts on the following issue:

"Whether an insurer that issues an insurance policy containing a UM/UIM endorsement with coverage terms that are more restrictive than the liability coverage terms under the same policy must produce evidence of a valid waiver of coverage as to those terms under *Linko v. Indemn. Ins. Co. of N. Am.* (2000), 90 Ohio St.3d 445 [739 N.E.2d 338], so as to avoid coverage by operation of law."

Resnick, J., dissents.

The conflict case is *Riggs v. Motorists Mut. Ins. Co.*, 10th Dist. No. 02AP-876, 2003-Ohio-1657.

IT IS FURTHER ORDERED by the court that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Summit County.

2003-1229. EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 2003-M-281, 2003-M-282, 2003-M-283, and 2003-M-288. This cause is pending before the court as an appeal from the Board of Tax Appeals. Upon consideration of appellant's motion for extension of time to file merit brief pursuant to S.Ct.Prac.R. XIV(6)(C),

IT IS ORDERED by the court that the motion for extension of time be, and hereby is, granted, and appellant's merit brief is due on or before January 2, 2004.

2003-1325. State v. Hand.

Delaware C.P. No. 02CRI08366. This cause is pending before the court as a death penalty appeal from the Court of Common Pleas of Delaware County. Upon consideration of appellant's motion for extension of time to transmit the record,

IT IS ORDERED by the court that the motion for extension of time to transmit the record be, and hereby is, granted, and the time for transmitting the record is extended to December 31, 2003.

2003-1341. In re Conservatorship of Ahmed.

Belmont App. Nos. 01BA13 and 01BA48, 2003-Ohio-3272. This cause came on for further consideration upon appellant's motion to state findings of fact and conclusions of law. Upon consideration thereof,

IT IS ORDERED by the court that the motion to state findings of fact and conclusions of law be, and hereby is, denied.

2003-1710. Cambridge Commons L.P. v. Guernsey Cty. Bd. of Revision.

Board of Tax Appeals, No. 2002-V-1272. This cause is pending before the court as an appeal from the Board of Tax Appeals. Upon consideration of appellant's motion for extension of time to file merit brief pursuant to S.Ct.Prac.R. XIV(6)(C),

IT IS ORDERED by the court that the motion for extension of time be, and hereby is, granted, and appellant's merit brief is due on or before December 18, 2003.

2003-1766. State v. Bethel.

Franklin C.P. No. 00CR116600. This cause is pending before the court as a death penalty appeal from the Court of Common Pleas of Franklin County. Upon consideration of appellant's motion for extension of time to transmit the record,

IT IS ORDERED by the court that the motion for extension of time to transmit the record be, and hereby is, granted, and the time for transmitting the record is extended to March 8, 2004.

RECONSIDERATION OF PRIOR DECISIONS

2003-1467. In re Pianowski.

Mahoning App. No. 03MA16, 2003-Ohio-3881. Reported at 100 Ohio St.3d 1482, 2003-Ohio-6105, 798 N.E.2d 1091.

IT IS ORDERED by the court that the motion for reconsideration in this case be, and hereby is, denied.

MISCELLANEOUS DISMISSALS

2003-0185. Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision.

Board of Tax Appeals, No. 2002-J-1205. This cause is pending before the court as an appeal from the Board of Tax Appeals. Upon consideration of appellant's application for dismissal,

IT IS ORDERED by the court that the application for dismissal be, and hereby is, granted.

ACCORDINGLY, IT IS FURTHER ORDERED by the court that this cause be, and hereby is, dismissed.

2003-1095. Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision.

Board of Tax Appeals, No. 2002-M-2018. This cause is pending before the court as an appeal from the Board of Tax Appeals. Upon consideration of the parties' joint motion to remand this cause to the Board of Tax Appeals,

It is ordered by the court that the joint motion to remand be, and hereby is, granted, and this cause is remanded to the Board of Tax Appeals to implement the settlement agreement of the parties.

2003-1336. State ex rel. Staton v. Interstate Truckway, Inc.

Franklin App. No. 02AP-1033, 2003-Ohio-3187. This cause is pending before the court as an appeal from the Court of Appeals for Franklin County. It appears from the records of this court that appellant has not filed a merit brief, due December 1, 2003, in compliance with the Rules of Practice of the Supreme Court and therefore has failed to prosecute this case with the requisite diligence. Upon consideration thereof,

IT IS ORDERED by the court that this cause be, and hereby is, dismissed, sua sponte.

2003-1587. State ex rel. Pratt v. Indus. Comm.

Franklin App. No. 02AP-1155, 2003-Ohio-3815. This cause is pending before the court as an appeal from the Court of Appeals for Franklin County. Upon consideration of appellant's application for dismissal,

IT IS ORDERED by the court that the application for dismissal be, and hereby is, granted.

ACCORDINGLY, IT IS FURTHER ORDERED by the court that this cause be, and hereby is, dismissed.