

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 26, 2005

[Cite as *10/26/2005 Case Announcements*, 2005-Ohio-5531.]

MERIT DECISIONS WITH OPINIONS

2003-2035. Hess v. Norfolk S. Ry. Co., 2005-Ohio-5408.

Cuyahoga App. No. 80717, 153 Ohio App.3d 565, 2003-Ohio-4172. Judgment affirmed in part and reversed in part, and cause remanded.

Resnick, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.
Moyer, C.J., and Lanzinger, J., concur in part and dissent in part.

2004-0193. Sarmiento v. Grange Mut. Cas. Co., 2005-Ohio-5410.

Cuyahoga App. No. 82807, 2003-Ohio-6485. Judgment affirmed in part and reversed in part.

Moyer, C.J., Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.
Lanzinger, J., concurs in part and dissents in part.
Resnick and Pfeifer, JJ., dissent.

2004-0752. Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc., 2005-Ohio-5409.

Franklin App. No. 03AP-269, 2004-Ohio-1408. Judgment reversed and cause remanded.

Moyer, C.J., Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Resnick and Pfeifer, JJ., dissent.

2004-1770. Disciplinary Counsel v. Hunter, 2005-Ohio-5411.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 02-56. Sandra K. Hunter, Attorney Registration No. 0009526, is permanently disbarred from the practice of law in Ohio.

Resnick, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Pfeifer, J., concurs in judgment only.
Moyer, C.J., and Lundberg Stratton, J., dissent.

2005-0172. Seaford v. Norfolk S. Ry. Co., 2005-Ohio-5407.

Cuyahoga App. No. 83137, 2004-Ohio-6849. Judgment reversed in part and cause remanded.

Resnick, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.
Moyer, C.J., and Lanzinger, J., dissent.

2005-0818. Stark Cty. Bar Assn. v. Marosan, 2005-Ohio-5412.

On Certified Report by the Board of Commissioners on Grievances and Discipline, Nos. 04-044 and 04-049. Joseph Eugene Marosan, Attorney Registration No. 0025849, is suspended from the practice of law in Ohio for two years, with 18 months stayed on conditions.

Moyer, C.J., Resnick, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Pfeifer, J., would suspend respondent for two years, all stayed on conditions.

MERIT DECISIONS WITHOUT OPINIONS

2005-1513. Stewart v. Kainrad.

In Prohibition. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

2005-1578. State ex rel. Williams v. Saffold.

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

2005-1588. State ex rel. Yun v. Reinbold.

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

2005-1589. State ex rel. Yun v. James.

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

2005-1590. State ex rel. Yun v. James.

In Procedendo. On motion to dismiss and motion to strike the motion to dismiss. Motion to dismiss granted. Motion to strike denied. Cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

2005-1660. State ex rel. Henley v. Money.

In Habeas Corpus. On petition for writ of habeas corpus of Raymond Henley. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

2005-1739. Frazier v. Moore.

In Habeas Corpus. On petition for writ of habeas corpus of John Wesley Frazier. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

MOTION AND PROCEDURAL RULINGS

2004-0738. Kish v. Akron.

On Order from the United States Court of Appeals for the Sixth Circuit Certifying Questions of State Law, Nos. 02-3631 and 02-3632. On supplemental briefs filed pursuant to the court's June 23, 2005, order.

Sua sponte, the court orders that additional oral argument be scheduled.

Lundberg Stratton and O'Donnell, JJ., dissent.

2005-1661. State v. Williams.

Summit App. No. 21840, 2004-Ohio-4316. On motion for leave to file delayed appeal. Motion denied.

2005-1676. State v. Fout.

Franklin App. No. 04AP-1139, 2005-Ohio-3151. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2005-1447, *State v. Fout*, Franklin App. No. 04AP-1139, 2005-

Ohio-3151; causes held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

2005-1696. State v. Newell.

Licking App. No. 2004CA00021, 2004-Ohio-6261. On motion for leave to file delayed appeal. Motion denied.

2005-1711. State v. Florence.

Allen App. No. 1-04-92. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2005-1718. State v. Lane.

Franklin App. No. 03AP-617, 2004-Ohio-5837. On motion for leave to file delayed appeal. Motion denied.

2005-1724. State v. Bordner.

Wayne App. No. 04CA0039, 2005-Ohio-1269. On motion for leave to file delayed appeal. Motion granted.

2005-1735. State v. McReynolds.

Stark App. No. 2004-CA-00023, 2005-Ohio-37. On motion for leave to file delayed appeal. Motion denied.

2005-1738. State v. Williams.

Cuyahoga App. No. 85327, 2005-Ohio-3715. On motion for leave to file delayed appeal. Motion granted.

2005-1745. State v. Scarberry.

Logan App. No. 8-04-32, 2005-Ohio-1425. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2005-0868, *State v. Scarberry*, Logan App. No. 8-04-32, 2005-Ohio-1425; causes held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

2005-1746. State v. Hatfield.

Franklin App. No. 04AP-402, 2004-Ohio-6450. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2005-1766. State v. Roberts.

Hamilton App. Nos. C-040575 and C-050005, 2005-Ohio-4848. On motion for stay of court of appeals' judgment. Motion granted.

2005-1774. State v. Cuevas.

Butler App. No. CA2004-12-299. On motion for stay of court of appeals' judgment. Motion denied.

Resnick and Pfeifer, JJ., dissent.

2005-1821. In re Jim's Sales, Inc.

Lorain App. No. 04CA008601, 2005-Ohio-4086. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., dissents.

APPEALS ACCEPTED FOR REVIEW

2005-1228. O'Connor v. Cleveland Clinic Found.

Cuyahoga App. No. 84219, 161 Ohio App.3d 43, 2005-Ohio-2328. Discretionary appeal accepted on Proposition of Law No. I.

Moyer, C.J., and O'Donnell, J., would accept on all Propositions of Law.

Pfeifer, O'Connor and Lanzinger, JJ., dissent.

2005-1249. State v. Fiedler.

Lake App. No. 2003-L-190, 2005-Ohio-3388. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

2005-1250. State v. Semala.

Lake App. No. 2003-L-128, 2005-Ohio-2653. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

2005-1343. State v. Satterwhite.

Franklin App. Nos. 04AP-964 and 04AP-965, 2005-Ohio-2823. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*,

Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

2005-1412. State v. McClanahan.

Summit App. No. 22277, 2005-Ohio-2975. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

2005-1447. State v. Fout.

Franklin App. No. 04AP-1139, 2005-Ohio-3151. Discretionary appeal accepted; cause consolidated with 2005-1676, *State v. Fout*, Franklin App. No. 04AP-1139, 2005-Ohio-3151; causes held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

APPEALS NOT ACCEPTED FOR REVIEW

2005-0793. State v. Scott.

Trumbull App. No. 2003-T-0172, 2005-Ohio-689. Discretionary appeal not accepted. Motions to strike denied as moot.

2005-0842. State v. Kelly.

Stark App. No. 2004CA00080, 2005-Ohio-739. Discretionary appeal not accepted. Motion to strike denied as moot.

2005-0878. Duman v. Campbell.

Cuyahoga App. No. 84490, 2005-Ohio-1168.
O'Donnell, J., not participating.

2005-1043. Longo v. Longo.

Geauga App. No. 2004-G-2556, 2005-Ohio-2069. Discretionary appeal and discretionary cross-appeal not accepted.

Moyer, C.J., dissents and would accept the appeal.

Lundberg Stratton, J., dissents and would accept the cross-appeal.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. I.

2005-1214. Dinks II Co., Inc. v. Chagrin Falls Village Council.

Cuyahoga App. No. 84939, 2005-Ohio-2317.

Pfeifer, J., dissents.

2005-1218. Franklin-Rengan v. Rengan.

Montgomery App. No. 20705, 2005-Ohio-2763.

2005-1220. OSI Sealants, Inc. v. Wausau Underwriters Ins. Co.

Lake App. No. 2003-L-181, 2005-Ohio-2528.

Pfeifer and O'Donnell, JJ., dissent.

O'Connor, J., dissents and would accept the appeal on Proposition of Law No. II.

2005-1224. State v. Perdue.

Mahoning App. No. 04 MA 119, 2005-Ohio-2703.

2005-1230. Gorski v. Myer.

Stark App. No. 2005CA00033, 2005-Ohio-2604.

2005-1231. State v. Reynolds.

Summit App. No. 22544.

2005-1235. State v. Bostic.

Cuyahoga App. No. 84842, 2005-Ohio-2184.

2005-1243. State v. Smith.

Franklin App. No. 04AP-859, 2005-Ohio-2560.

Lundberg Stratton, O'Donnell and Lanzinger, JJ., dissent and would accept the appeal on Proposition of Law No. II and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

2005-1244. State v. Lewis.

Mahoning App. No. 03 MA 36, 2005-Ohio-2699.

2005-1245. Gugliotta v. Morano.

Summit App. Nos. 22077 and 22095, 161 Ohio App.3d 152, 2005-Ohio-2570.

2005-1246. Godby v. Med. Cent. Health Sys.

Richland App. No. 04CA89, 2005-Ohio-2671.

2005-1253. State v. Adkins.

Lucas App. No. L-04-1143, 2005-Ohio-3203.
Lanzinger, J., not participating.

2005-1254. Carter v. Lorain.

Lorain App. No. 04CA008537, 2005-Ohio-2564.

2005-1255. Harbour v. Ridgeway.

Franklin App. No. 04AP-350, 2005-Ohio-2643.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal on Proposition of Law No. I.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. II.

2005-1256. State v. Dixon.

Richland App. No. 2004-CA-90, 2005-Ohio-2846.

2005-1263. Williams v. Ohio Dept. of Rehab. & Corr.

Franklin App. No. 04AP-1193, 2005-Ohio-2669.

2005-1265. State v. Jones.

Defiance App. No. 4-05-12.

2005-1266. State v. Andrews.

Cuyahoga App. No. 84137, 2005-Ohio-1161.

2005-1270. Bishop v. Nelson Ledges Quarry Park, Ltd.

Portage App. No. 2004-P-0008, 2005-Ohio-2656.

2005-1271. State v. Edwards.

Cuyahoga App. No. 84660, 2005-Ohio-2441.

2005-1272. In re Trust of Findeiss.

Muskingum App. No. CT2003-0050, 2005-Ohio-2985.

2005-1274. Preferred Capital, Inc. v. Pilla Real Estate.

Cuyahoga App. No. 85881.

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

2005-1275. Preferred Capital, Inc. v. Metro. Plaza Mgt., Inc.

Cuyahoga App. No. 85886.

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

2005-1276. Preferred Capital, Inc. v. Niagra Cleaning Serv., Inc.

Cuyahoga App. No. 85898.

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

2005-1277. Preferred Capital, Inc. v. Courtesy Bldg. Serv., Inc.

Cuyahoga App. No. 85730.

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

2005-1278. Preferred Capital, Inc. v. Five R Repair & Lawn Serv. & Landscaping, Inc.

Cuyahoga App. No. 85798.

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

2005-1279. Preferred Capital, Inc. v. Harr's Surf & Turf Markets, Inc.

Cuyahoga App. No. 85799.

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

2005-1280. Preferred Capital, Inc. v. Guions Detailing & Design, Inc.

Cuyahoga App. No. 85775.

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

2005-1281. Preferred Capital, Inc. v. Montgomery Cty. Credit Bur., Inc.

Cuyahoga App. No. 85805.

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

2005-1282. Preferred Capital, Inc. v. Robert Phillip DiStefano, P.A.

Cuyahoga App. No. 85800.

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

2005-1283. Preferred Capital, Inc. v. Monarch Plumbing Co., Inc.

Cuyahoga App. No. 85900.

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

2005-1284. Preferred Capital, Inc. v. Money Mailer of Atlanta N., Inc.

Cuyahoga App. No. 85808.

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

2005-1285. Preferred Capital, Inc. v. Sys. Serv. & Design, Inc.

Cuyahoga App. No. 85802.

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

2005-1286. Preferred Capital, Inc. v. Wm. Smith, Sr., Tri Cty. Child Dev. Council, Inc.

Cuyahoga App. No. 85885.

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

2005-1287. Preferred Capital, Inc. v. Warner Robins Supply Co., Inc.

Cuyahoga App. No. 85842.

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

2005-1288. Preferred Capital, Inc. v. Horizon Plumbing, Inc.

Cuyahoga App. No. 85809.

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

2005-1289. Preferred Capital, Inc. v. Re Quest, Inc.

Cuyahoga App. No. 85804.

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

2005-1290. Preferred Capital, Inc. v. Farmers Mart, Inc.

Cuyahoga App. No. 85801.

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

2005-1292. Preferred Capital, Inc. v. Design Indus., Inc.

Cuyahoga App. No. 85899.

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

2005-1293. State v. Stigall.

Lucas App. No. L-03-1348, 2005-Ohio-2749.

2005-1294. State v. Argueta.

Licking App. No. 04CA73, 2005-Ohio-2724.

2005-1296. Bradley Dev. Co., Inc. v. N. Ohio Sewer Contracting, Inc.

Lorain App. No. 05CA008696.

2005-1297. Poitinger v. Poitinger.

Summit App. No. 22240, 2005-Ohio-2680.

O'Connor, J., not participating.

2005-1299. Scott G.F. v. Nancy W.S.

Huron App. No. H-04-015, 2005-Ohio-2750.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. VIII.

2005-1300. Metcalf v. Young.

Lucas App. No. L-04-1289, 2005-Ohio-2748.

2005-1304. State v. Meredith.

Warren App. No. CA2004-06-062, 2005-Ohio-2664.

2005-1307. Ryncarz v. Powhatan Point.

Belmont App. No. 04 BE 33, 2005-Ohio-2956.

2005-1308. Starinchak v. Sapp.

Franklin App. No. 04AP-484, 2005-Ohio-2715.

2005-1310. AmCare, Inc. v. Ohio Dept. of Job & Family Serv.

Franklin App. No. 04AP-209, 161 Ohio App.3d 350, 2005-Ohio-2714.

Lundberg Stratton and O'Donnell, JJ., dissent.

2005-1311. Walter v. Allstate Ins. Co.

Summit App. No. 22203, 2005-Ohio-2677.

2005-1315. State v. Brown.

Mahoning App. No. 03-MA-32, 2005-Ohio-2939.

2005-1332. Brzozowski v. Univ. Hosp. Health Sys.

Cuyahoga App. No. 85097, 2005-Ohio-2628.

Lundberg Stratton, J., dissents.

2005-1340. State v. Goode.

Butler App. No. CA2004-11-293, 2005-Ohio-2919.

2005-1367. State v. Buck.

Lorain App. No. 04CA008516, 2005-Ohio-2810.

2005-1378. State v. Green.

Stark App. No. 2004CA00229.

2005-1383. State v. Grove.

Crawford App. No. 3-04-26, 2005-Ohio-2894.

2005-1386. Bach v. Dicenzo.

Cuyahoga App. No. 84396, 2005-Ohio-2611.

Lanzinger, J., dissents.

O'Connor, J., not participating.

2005-1390. State v. Biddings.

Franklin App. No. 04AP-1263.

2005-1400. Kreilick v. Kreilick.

Sandusky App. No. S-04-006, 161 Ohio App.3d 682, 2005-Ohio-3041.

2005-1408. State v. Prade.

Summit App. No. 22718.

Moyer, C.J., and O'Donnell, J., dissent.

O'Connor, J., not participating.

2005-1413. State v. Roberts.

Hamilton App. No. C-040262, 2005-Ohio-3034 and 2005-Ohio-4050.

O'Donnell, J., dissents.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal on Proposition of Law No. V and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

2005-1425. State v. Small.

Franklin App. No. 04AP-316, 162 Ohio App.3d 325, 2005-Ohio-2291, 162 Ohio App.3d 375, 2005-Ohio-3813 and 2005-Ohio-3814.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., dissent.

2005-1430. State v. Jenkins.

Lake App. No. 2003-L-173, 2005-Ohio-3092.

2005-1436. State v. Askew.

Stark App. No. 2004CA00275, 2005-Ohio-3194.

2005-1472. W. Am. Ins. Group v. Springfield Poultry, Inc.

Licking App. No. 2004CA00083, 2005-Ohio-3192.

2005-1498. State v. Johnson.

Lucas App. No. L-03-1206, 2005-Ohio-1222.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

2005-1571. State v. Pamer.

Medina App. No. 04CA0027-M, 2004-Ohio-7190.

2005-1681. State v. Chavers.

Stark App. No. 2000CA00376, 2001-Ohio-1571.

O'Connor, J., not participating.

RECONSIDERATION OF PRIOR DECISIONS

2005-0632. State v. Billingsley.

Putnam App. No. 12-04-14. Reported at 106 Ohio St.3d 1505, 2005-Ohio-4605, 833 N.E.2d 1248. On motion for reconsideration. Motion granted to the following extent: Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Lanzinger, J., dissents.

2005-0817. State ex rel. Ohio Patrolmen's Benevolent Assn. v. Castle.

In Mandamus. Reported at 106 Ohio St.3d 1500, 2005-Ohio-4605, 833 N.E.2d 1244. On motion for reconsideration. Motion denied.

2005-0940. State v. Liles.

Allen App. No. 1-05-10. Reported at 106 Ohio St.3d 1508, 2005-Ohio-4605, 833 N.E.2d 1249. On motion for reconsideration. Motion denied.

2005-1126. State ex rel. Martin v. Hunt.

In Mandamus. Reported at 106 Ohio St.3d 1500, 2005-Ohio-4605, 833 N.E.2d 1244. On motion for reconsideration. Motion denied.

2005-1252. State ex rel. Brown v. Rhodes.

In Mandamus. Reported at 106 Ohio St.3d 1501, 2005-Ohio-4605, 833 N.E.2d 1244. On motion for reconsideration. Motion denied.