

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

June 5, 2013

[Cite as *06/05/2013 Case Announcements*, 2013-Ohio-2285.]

MERIT DECISIONS WITHOUT OPINIONS

2010-0302. State v. Jackson.

Trumbull App. No. 2008T0077. Upon consideration of the jurisdictional memoranda filed in this case, the court accepts the appeal on Proposition of Law No. I. This court's judgment of December 31, 2008, dismissing case No. 2008-1610 was not a judgment on the merits. Accordingly, appellant's first proposition of law is sustained. The December 31, 2009 judgment of the court of appeals in case No. 2008-T-0077 is vacated. Appellant's motion to remand this cause to the court of appeals is granted. This cause is remanded to the court of appeals for further proceedings on the merits.

Appellant's motion to hold the appeal in abeyance pending the decision in 2009-2028, *State v. Davis*, is denied as moot.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2013-0347. State ex rel. Messenger v. Kagel.

In Procedendo. On amended complaint in procedendo of Chad A. Messenger. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

O'Connor, C.J., dissents and would order respondent to file a response.

2013-0466. State v. Hall.

Delaware App. Nos. 12CAA030017, 12CAA030018, and 12CAA030019, 2013-Ohio-660. Discretionary appeal accepted and cause remanded to the court of appeals for application of *State v. Smith*, ___ Ohio St.3d ___, 2013-Ohio-1698, ___ N.E.2d ___.

O'Connor, C.J., and O'Donnell, Kennedy, and O'Neill, JJ., concur.
Pfeifer, Lanzinger, and French, JJ., dissent.

2013-0489. State ex rel. Rice v. Wolaver.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.
O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2013-0490. State ex rel. Bryant v. Durkin.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.
O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2013-0494. Bailey v. Ohio Court of Appeals.

In Procedendo. On motion to dismiss. Motion granted. Cause dismissed.
O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2013-0498. McGlosson v. Hedric.

In Procedendo. On motion to dismiss. Motion granted. Cause dismissed.
O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2013-0506. Franklin v. Judge for Case No. 03CR-03-2059.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.
O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, and French, JJ., concur.
O'Neill, J., dissents and would grant an alternative writ.

2013-0525. Brown v. Horrigan.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.
O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2013-0526. Brown v. Callahan.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.
O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2013-0529. State ex rel. Curley v. Summit Cty. Clerk of Courts.

Miscellaneous Case. On motion to dismiss. Motion granted. Cause dismissed.

Pfeifer, Acting C.J., and O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

O'Connor, C.J., not participating.

2013-0587. Morgan v. Pineda.

In Habeas Corpus. On petition for writ of habeas corpus of James W. Morgan Jr. Sua sponte, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

MOTION AND PROCEDURAL RULINGS

1997-1474. State v. Sheppard.

Hamilton App. Nos. C-950402 and C-950744. On motion to set execution date. Motion denied.

2004-1163. State v. Johnson.

Guernsey C.P. No. 03CR116. On application for reopening under S.Ct.Prac.R. 11.06. Application denied.

Pfeifer, J., dissents.

2012-2098. In re Comm. Rev. of Capacity Charges of Ohio Power Co.

Public Utilities Commission, No. 10-2929-EL-UNC. On appellee's motion to dismiss Industrial Energy Users-Ohio's appeal. Motion granted. The appeal of Industrial Energy Users-Ohio is dismissed. On joint motion to consolidate case Nos. 2012-2098 and 2013-0228 for the purposes of briefing. Motion granted. The cross-appeals remain pending and are consolidated with case No. 2013-0228 for briefing. Industrial Energy Users-Ohio and Ohio Consumers' Counsel shall proceed as the appellants/cross-appellees and all other parties shall proceed as appellee or appellees/cross-appellants. The appellants/cross-appellees shall file their first brief within 40 days of the date of this entry and the case shall otherwise proceed in accordance with S.Ct.Prac.R. 16.05.

Pfeifer and O'Neill, JJ., would deny the motion to dismiss.

2013-0228. In re Comm. Rev. of Capacity Charges of Ohio Power Co.

Public Utilities Commission, No. 10-2929-EL-UNC. On Ohio Power Company's motion to dismiss. Motion denied. On joint motion to consolidate case Nos.

2012-2098 and 2013-0228 for the purposes of briefing, it is ordered by the court that the motion is granted. Industrial Energy Users-Ohio and Ohio Consumers' Counsel shall proceed as the appellants/cross-appellees and all other parties shall proceed as appellee or appellees/cross-appellants. The appellants/cross-appellees shall file their first brief within 40 days of the date of this entry and the case shall otherwise proceed in accordance with S.Ct.Prac.R. 16.05.

2013-0473. Docks Venture, L.L.C. v. Dashing Pacific Group LTD.

Lucas App. No. L-12-1312. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2012-1398, *Gauthier v. Gauthier*, 12th Dist. No. CA2011-05-048, 2012-Ohio-3046; and briefing schedule stayed.

2013-0604. State v. Lung.

Brown App. No. CA2012-03-004, 2012-Ohio-5352. On motion for delayed appeal. Motion denied.

Pfeifer, J., dissents.

2013-0280. State ex rel. Calvaruso v. Brown.

In Quo Warranto. On consideration of respondent's motion for judgment on the pleadings. Motion denied. On consideration of the city of Akron's motion for leave to intervene. Motion granted. An alternative writ is granted and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05: The parties shall file any evidence they intend to present within 20 days after the date of this entry; relator shall file a brief within 10 days after the filing of the evidence; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 7 days after the filing of respondent's brief.

2013-0606. State v. Finkbeiner.

Brown App. No. CA2012-08-016. On motion for delayed appeal. Motion granted.

O'Connor, C.J., and French, J., dissent.

2013-0610. State v. West.

Cuyahoga App. No. 98274, 2013-Ohio-487. On motion for delayed appeal. Motion granted.

O'Donnell and French, JJ., dissent.

2013-0613. State v. Hale.

Franklin App. Nos. 09AP-609 and 09AP-610. On motion for delayed appeal. Motion denied.

Pfeifer, J., dissents.

2013-0627. State v. Williams.

Highland App. No. 12CA7, 2013-Ohio-594. On motion for delayed appeal. Motion denied.

Pfeifer and O’Neill, JJ., dissent.

2013-0630. Sparks v. Sparks.

Warren App. No. CA2012-09-090. On motion for stay of court of appeals judgment. Motion denied.

2013-0649. State v. Ralston.

Clermont App. Nos. CA2012-07-053 and CA2012-07-054. On motion for delayed appeal. Motion granted.

O’Connor, C.J., and French and O’Neill, JJ., dissent.

APPEALS ACCEPTED FOR REVIEW

2013-0283. Sauer v. Crews.

Franklin App. No. 12AP-320, 2012-Ohio-6257.

Pfeifer and O’Neill, JJ., dissent.

French, J., not participating.

2013-0382. State v. Gilbert.

Hamilton App. No. C-110382, 2013-Ohio-238.

O’Connor, C.J., and French, J., would accept the appeal on Proposition of Law No. I only.

Pfeifer, J., dissents.

2013-0403. State v. Limoli.

Franklin App. No. 11AP-924, 2012-Ohio-4502. Discretionary appeal accepted. Discretionary cross-appeal not accepted.

O’Connor, C.J., and Pfeifer, J., dissent and would not accept the appeal.

French, J., would also accept cross-appeal Proposition of Law No. II.

O’Neill, J., dissents and would not accept the appeal but would accept the cross-appeal.

2013-0459. Auer v. Paliath.

Montgomery App. No. 25158, 2013-Ohio-391.
Pfeifer and Lanzinger, JJ., dissent.

2013-0464. State v. Cochran.

Franklin App. No. 11AP-408, 2012-Ohio-5899. Discretionary appeal accepted on Proposition of Law No. I and cause held for the decision in 2012-1070, *State v. Washington*, 9th Dist. No. 11CA010015, 2012-Ohio-2117.
Pfeifer, O'Donnell, and Kennedy, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2012-0474. State v. Davis.

Licking App. No. 09-CA-0019, 2012-Ohio-32.
O'Neill, J., dissents.

2013-0075. State v. Connin.

Lucas App. No. L-11-1312, 2012-Ohio-4989.

2013-0093. State v. Pinkney.

Butler App. No. CA2012-10-202.

2013-0130. State v. Samuels.

Summit App. Nos. 25982, 25983, and 25984, 2012-Ohio-5401.

2013-0261. Jontony v. Colegrove.

Cuyahoga App. No. 98295, 2012-Ohio-5846. Discretionary appeal and cross-appeal not accepted.

O'Connor, C.J., dissents and would accept the appeal on Proposition of Law Nos. III and IV.

Kennedy, J., dissents and would accept the appeal on Proposition of Law Nos. I and IV.

O'Neill, J., dissents and would accept the appeal and cross-appeal.

2013-0265. State v. Porterfield.

Trumbull App. No. 2012-T-0039, 2013-Ohio-14.

2013-0377. Bank of New York Mellon v. Gindele.
Hamilton App. No. C-120429.

2013-0378. Ruf v. Belfance.
Summit App. No. 26297, 2013-Ohio-160.
O’Neill, J., dissents.

2013-0379. State v. Taylor.
Montgomery App. No. 23990, 2013-Ohio-186.

2013-0381. BAC Home Loans Servicing, LP v. Kolenich.
Butler App. No. CA2012-01-001, 2013-Ohio-155.

2013-0384. State v. Phippen.
Scioto App. No. 11CA3412, 2012-Ohio-4692.
O’Connor, C.J., and O’Neill, J., dissent.

2013-0387. State v. Klein.
Muskingum App. No. CT2012-0021, 2013-Ohio-229. Discretionary appeal not
accepted. Motion for stay denied.
O’Connor, C.J., and French, J., dissent.

2013-0389. Thacker v. Day.
Montgomery App. No. 25265, 2013-Ohio-187.
O’Neill, J., dissents.

2013-0390. State v. Ward.
Hamilton App. No. C-120119.

2013-0391. State v. Russ.
Hamilton App. No. C-120319.

2013-0395. State v. Grube.
Gallia App. No. 12CA7, 2013-Ohio-692.
O’Neill, J., dissents.

2013-0398. State v. Kelm.
Wood App. No. WD-11-024, 2013-Ohio-202.

2013-0399. State v. King.

Marion App. No. 9-12-47.

2013-0400. Henry v. Smith.

Crawford App. No. 3-13-03.

2013-0405. McWilliams v. Schumacher.

Cuyahoga App. Nos. 98188, 98288, 98390, and 98423, 2013-Ohio-29.

2013-0406. Crain v. Crain.

Clark App. No. 2011-CA-92, 2012-Ohio-6180.

O'Donnell and Lanzinger, JJ., dissent.

2013-0408. Duncan v. Cuyahoga Community College.

Cuyahoga App. No. 97222, 2012-Ohio-1949.

2013-0409. State v. Kelly.

Portage App. No. 2010-P-0049, 2012-Ohio-523.

O'Neill, J., dissents.

2013-0411. Ohio Bell Tel. Co. v. Cleveland.

Cuyahoga App. No. 98683, 2013-Ohio-270.

2013-0416. Duck v. Cantoni.

Washington App. No. 11CA20, 2013-Ohio-351.

Lanzinger and O'Neill, JJ., dissent.

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

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2013-0422. State v. Hatton.

Pickaway App. No. 11CA23, 2013-Ohio-475.

O'Connor, C.J., and Kennedy and French, JJ., dissent.

2013-0423. Wells Fargo Bank, N.A. v. Cogar.

Ashland App. No. 12-COA-022, 2013-Ohio-311.

2013-0424. Schiemann v. Foti Contracting, L.L.C.

Cuyahoga App. No. 98662, 2013-Ohio-269.

O'Neill, J., dissents.

2013-0425. Kmotorka v. Wylie.

Wood App. Nos. WD-11-018 and WD-11-026, 2013-Ohio-321.
French and O’Neill, JJ., dissent.

2013-0426. State v. Spencer.

Franklin App. No. 12AP-472, 2013-Ohio-465.
O’Donnell, J., dissents.

2013-0428. State v. Miller.

Franklin App. No. 12AP-389, 2013-Ohio-288.
O’Donnell, J., dissents.

2013-0432. State v. West.

Cuyahoga App. Nos. 97391 and 97900, 2013-Ohio-96.

2013-0435. State v. Shabazz.

Cuyahoga App. No. 98601, 2013-Ohio-267.

2013-0437. Lambda Research, Inc. v. Jacobs.

Hamilton App. No. C-100796, 2013-Ohio-348.
Pfeifer, J., dissents.

2013-0439. State v. Keeley.

Washington App. No. 12CA15, 2013-Ohio-474.

2013-0440. State v. May.

Cuyahoga App. Nos. 96362 and 96421.

2013-0442. State v. Cox.

Greene App. No. 2011 CA 19, 2012-Ohio-2100.

2013-0443. State v. Lloyd.

Warren App. No. CA2012-11-123.

2013-0444. Paul v. Hamilton Cty. Job & Family Servs.

Hamilton App. No. C-130071.

2013-0445. State v. Sanders.

Pickaway App. No. 12CA4, 2013-Ohio-1326.

2013-0447. State v. Bradford.

Adams App. No. 11CA928, 2013-Ohio-480.

2013-0448. Serraino v. Fauster-Cameron, Inc.

Defiance App. No. 4-12-11, 2013-Ohio-329.

Pfeifer, J., dissents.

Lanzinger, J., not participating.

2013-0456. State v. Lawson.

Franklin App. No. 12AP-53, 2013-Ohio-803.

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

Kennedy, J., dissents.

2013-0457. Estate of Grilli v. Smith.

Fairfield App. No. 2012-CA-12, 2012-Ohio-6146.

O'Donnell, J., dissents.

2013-0469. State v. Wangler.

Allen App. No. 1-11-18, 2012-Ohio-4878.

O'Neill, J., dissents.

2013-0471. State v. Wagner.

Hamilton App. No. C-120402, 2013-Ohio-383.

O'Neill, J., dissents.

2013-0478. State v. Withrow.

Ashtabula App. No. 2011-A-0067, 2012-Ohio-4887.

2013-0487. State v. Carter.

Allen App. No. 1-12-19.

2013-0488. State v. Sanders.

Hamilton App. No. C-110741.

2013-0495. State v. Schuler.

Hamilton App. No. C-060864.

2013-0500. State v. Fluharty.

Stark App. No. 2011 CA 231.

2013-0503. State v. Van Tielen.

Brown App. No. CA2012-04-007, 2013-Ohio-446.

2013-0508. In re J.G.

Wayne App. No. 12CA0037, 2013-Ohio-417.

French, J., dissents and would accept the appeal on Proposition of Law No. 1.

O'Neill, J., dissents.

2013-0512. State v. Smith.

Cuyahoga App. No. 98280, 2013-Ohio-576.

2013-0517. State v. Beckwith.

Cuyahoga App. No. 98497, 2013-Ohio-492.

O'Donnell, Kennedy, and French, JJ., dissent.

2013-0531. State v. Sanders.

Stark App. No. 2012CA00042, 2013-Ohio-789.

2013-0540. State v. Naegele.

Clermont App. No. CA2012-07-055.

2013-0557. State v. Williams.

Lucas App. No. L-11-1084, 2013-Ohio-726.

2013-0568. State v. Williams.

Franklin App. No. 12AP-664, 2013-Ohio-711.

2013-0612. State v. Mitchell.

Franklin App. No. 12AP-572, 2013-Ohio-1059.

2013-0623. State v. Maynard.

Franklin App. No. 11AP-697, 2013-Ohio-802.

RECONSIDERATION OF PRIOR DECISIONS

2013-0152. Bank of New York v. Elliot.

Cuyahoga App. Nos. 97506 and 98179, 2012-Ohio-5285. Reported at ___ Ohio St.3d ___, 2013-Ohio-1506, 986 N.E.2d 24. On motion for reconsideration. Motion denied.

2013-0270. State v. Blair.

In Habeas Corpus. Reported at 134 Ohio St.3d 1505, 2013-Ohio-1123, 984 N.E.2d 1100. On motion to reopen habeas corpus and objection of dismissal. Motion denied. On motion for oral argument. Motion denied. On motion to certify record. Motion denied.